

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

963

In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 21,138

ROCKY MOUNTAIN POWER COMPANY,
Petitioner,

v.

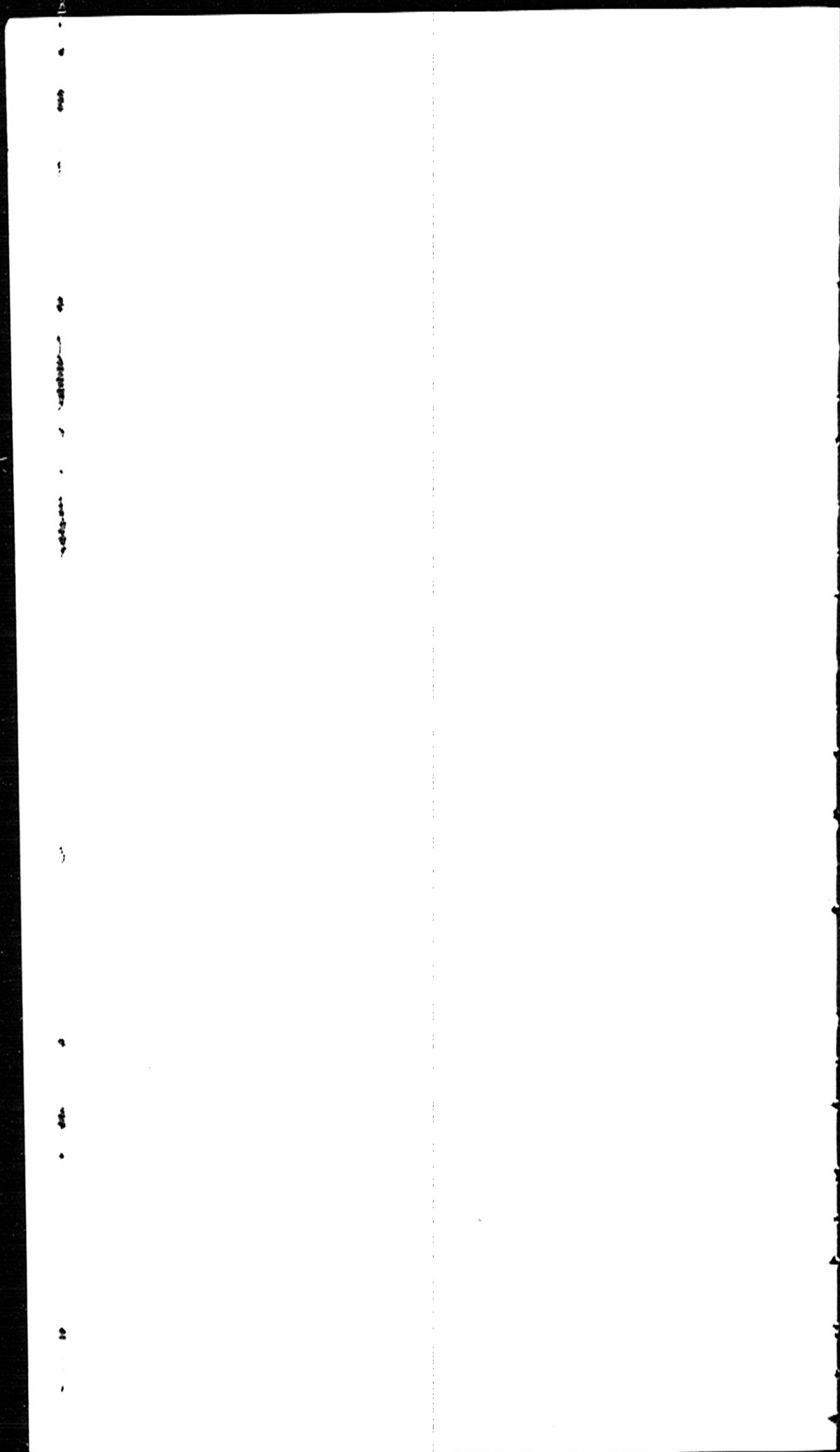
FEDERAL POWER COMMISSION,
Respondent.

**PETITION FOR REVIEW OF AN ORDER
OF THE FEDERAL POWER COMMISSION**

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 23 1968

Nathan J. Paulson
CLERK



(i)

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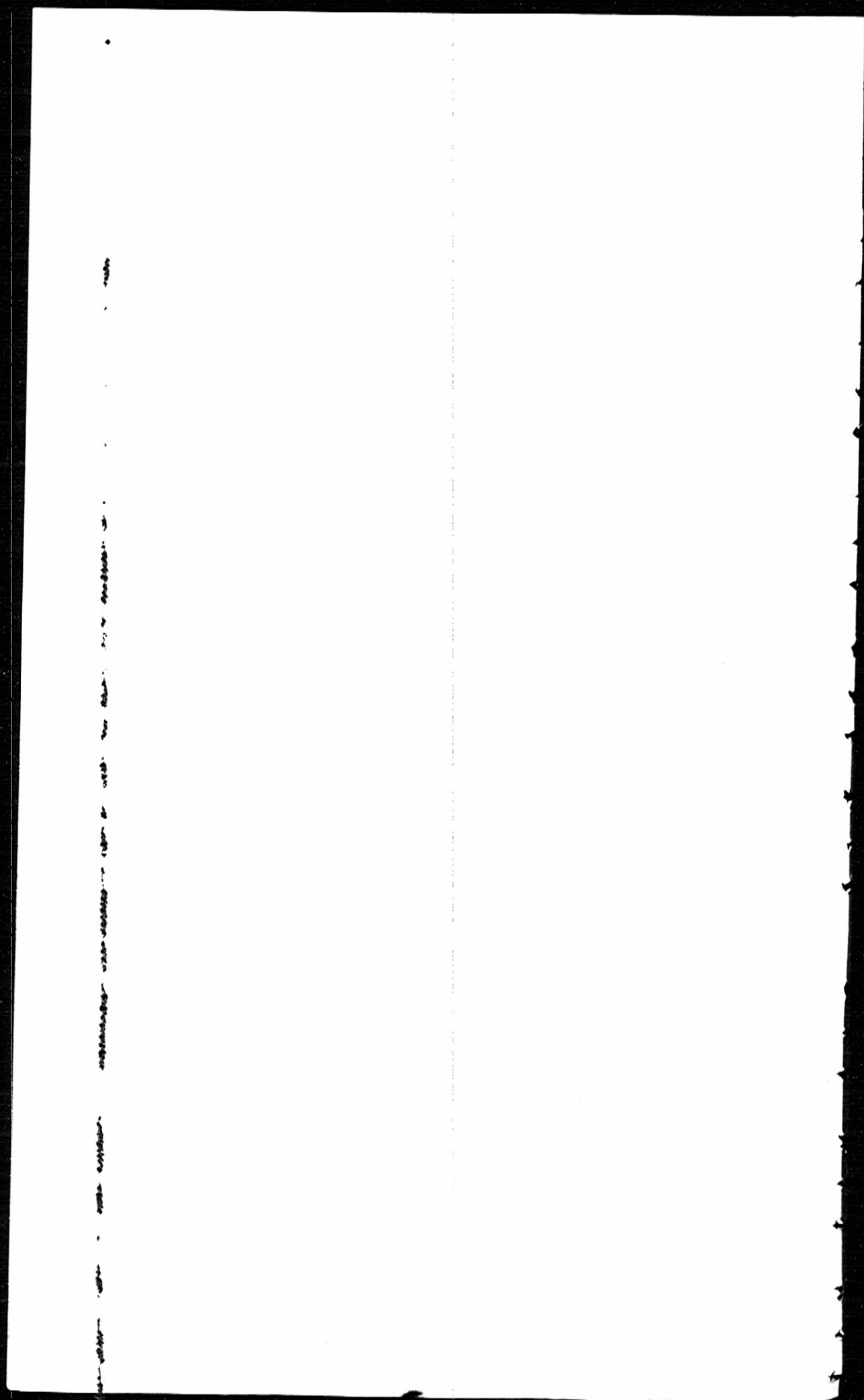
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PREHEARING CONFERENCE

Washington, D.C.

April 12, 1966

[10]

MR. BRANNAN: * * *

The second component of the Mountain Midwest Power Pool is a corporation, a Delaware corporation, known as Oak Creek Power

[11]

Company. It also will maintain its headquarters in Denver, and is expected to concurrently, with the construction of the hydroelectric facilities, to commence the construction of a substantial steam plant.

The third facility or component is the East-West Intertie, Inc., a Delaware corporation, which also will maintain its headquarters in Colorado, and will provide the transmission lines extending in an easterly direction to Columbus, or Lincoln, Nebraska, or Omaha.

PRESIDING EXAMINER: Is the feasibility of this project dependent on what happens to the other two entities you have just described?

MR. BRANNAN: I would say, Mr. Examiner, that the feasibility is. In short, this project, at this moment, unless it had a purchaser within the State of Colorado for its peaking capacity, must find a purchaser for its peaking capacity elsewhere, and that purchaser would also require a base load supply of power to go along with it. Obviously, of course, if it is at any distance, then it will be necessary to transmit the power, and the East-West Intertie proposes to construct an extra high voltage line, five hundred kilovolts, to Lincoln, Nebraska, or to Columbus, Nebraska, as the Consumers Public Power District of Nebraska, which has indicated its intention to negotiate a purchase of this power, as and when a license is granted, will indicate.

* * *

[15, 17-18]

[15]

* * *

PRESIDING EXAMINER: What is the total estimated cost of the first two stages?

MR. BRANNAN: The total estimated cost of the first two stages is approximately \$163,000,000.

[17]

* * *

PRESIDING EXAMINER: Mr. Brannan, I noticed in the Commission's order of August 19, 1965, it was stated that at that point the application was still deficient as to information regarding the financing of the project, and the availability of markets.

Would you care to address yourself to those points?

MR. BRANNAN: Yes, Mr. Examiner. There is, in the material in our submission which was made as directed, first of all a letter of intent executed by the Consumers Public Power District of the State of Nebraska, indicating the intention to negotiate preliminarily for one hundred kilowatts of power, and to pursue this further as their loads begin to become more apparent.

There is also in the file a letter of intent from Kohn-Koeb and Company, of New York City, a financing house, indicating their intention to make the funds available for the project on a set of conditions, a series of conditions, one of which of course is the approval of the project for construction by the Federal Power Commission, the consummation of a contract for the purchase of the power by a responsible user, and a number of other conditions.

[18]

* * *

PRESIDING EXAMINER: Do you have any indication as to how much of this project can be financed by bonds, and how much by other means, if other means are necessary what means are available?

MR. BRANNAN: Other than the letter which is now on

[18, 20, 24]

file from Kohn-Loeb and Company, which does not, Mr. Examiner, spell out the precise amounts which will be raised by the particular issues, we do not at this moment have a complete presentation on that point.

PRESIDING EXAMINER: Doesn't this matter of prospective capital structure have a very direct bearing on the feasibility of the project?

MR. BRANNAN: Well, it most certainly does. * * *

[20]

* * *

I must equally frankly say to you that I don't think anyone, or certainly we cannot say how this project would be financed until we have consummated a contract with a responsible power user.

I also very frankly say to you we are not in the position of let's say the Public Service Company, or any other great operating utility today, which can, on the basis of its existing operations, facilities, resources, and demonstration of having produced and distributed power, go to the money market and say, "Look, we want to add to what we have got." I do say to you, however, Mr. Examiner, that there must be some kind of opportunity for a new entity of this type to enter the field.

* * *

[24]

* * *

PRESIDING EXAMINER: Let me come back to the financing problem, if I may, Mr. Brannan.

You say that the estimated cost of the first two stages is \$163,000,000. How much can you tell me at this point about where you expect to get that?

MR. BRANNAN: Well,—

PRESIDING EXAMINER: I understand you have a letter of intent from Kohn-Loeb and Company, but I have read that letter and it doesn't seem to me it says very much. There is no indication of what type of capital structure is envisioned here.

JA 3

[24-26, 29]

Is there anything that you can say about that at this point?

MR. BRANNAN: Well, Mr. Examiner, there are things which can be said, and we hope will be developed before you are asked to make your decision.

First of all we have now under exploration the creation of an entity which may issue tax-free bonds and securities. This would be an entity created in Nebraska, composed of the representatives of the principal power users. This facility, or instrumentality, would then offer its bonds for the purpose of securing the financing to build these two facilities.

[25]

You are aware, I believe, that this type of a facility, the principal right to a tax-free status for its securities, turns on the dedication of the facilities to the ownership—to the benefit and ownership of the user. It has been a part of the proposal of Rocky Mountain Power Company from the beginning that the ultimate ownership of these facilities would pass into the ownership of the users in proportion to the amount of power—of the total supply which they will use.

This kind of a facility is under discussion, and under discussion both with the Nebraska people and with Kohn-Loeb.

* * *

[26]

MR. BRANNAN: There has been approximately one million dollars spent in the development—in the procurement of the water rights, in the development of the engineering studies, and in all the rest of the related work.

* * *

[29]

* * *

MR. BAUCOM: Mr. Examiner, Counsel: Utah Power and Light Company—and I might also include Western Colo-

rado Power Company, if I may—Your Honor, at this time, would wish to reserve its right to make opening statement.

However, these intervenors would, at this time, ask leave of the Examiner and the Commission to file a motion to dismiss at the Examiner's discretion. We can either state the motion orally at this time or file the motion subsequently.

PRESIDING EXAMINER: I believe under the rules of the Commission, I am not entitled to grant such a motion, except in connection with my initial decision.

MR. BAUCOM: I understand, Your Honor, the matter would have to be referred to the Commission for action, perhaps at this time.

PRESIDING EXAMINER: Yes.

MR. BAUCOM: These intervenors would merely ask leave to file such a motion on or before the date set forth for disposition of motions which, as I recall, would be May 9th.

PRESIDING EXAMINER: Yes, that is the date fixed by the Commission in its order. You may file such a motion by then, with such supporting authorities as you consider appropriate, and answers to the motion will be filed by May 16th.

* * *

[30]

* * *

MR. FOSTER: There has been reference to the possibility this morning of a motion to strike, or rather a motion to dismiss the applicant's application.

[31]

I think it fair to say in that regard that based upon what I have read, and what I have heard, there can be no reasonable question but what the applicant has a total failure of proof on the material thus far filed in at least two areas, one financing and the other marketing.

If I am right in what I have said it is obvious a motion to dismiss would lie properly, and I recognize, also, such

[31, 37-38]

a motion would be one properly to be addressed, to the Commission.

In that regard I wish to be sure of one thing. There was reference to the date of May 9th as being the proper day on or before which such a motion might be filed. Under paragraph 4 of the Commission's Order of August 19th, I believe that date was mentioned only, however, with reference to motions to strike, and I simply wish to be sure that I'm right in concluding, as I do, that a motion to dismiss would not necessarily have to be filed—to be received on or before May 9th—but might at any time thereafter properly lie.

Do I read the order correctly in that respect, Your Honor?

PRESIDING EXAMINER: Yes, I think you do. I think it would be helpful to the progress of the hearing if such motions could be made on or before May 9th, and the request to refer such a motion to the Commission would perhaps be more persuasive if it were made early.

* * *

[37]

* * *

Now in most of the hearings on license applications that I have been acquainted with, which I have attended, Staff has usually not taken a position on the application, but has preferred to serve the function strictly of obtaining an adequate record for the use of the Examiner and for the use of the Commission, and has preferred to not take a position until the record has been closed, until the brief-writing time has come.

However, in this case, Staff has to take a position with regard to financing and with regard to marketing. Shortly

[38]

after the initial filing of the application for license, a letter was addressed to the applicant on February 2, [1961] pointing out the deficiency in a number of respects, including financing, and including market.

Subsequently—

PRESIDING EXAMINER: February 2 of this year?

MR. SANDER: Of 1961.

PRESIDING EXAMINER: Of 1961?

MR. SANDER: Yes, sir, subsequently to March 17 and April 24, 1961, and March 30 and May 30 of 1962, March 30, July 29 of 1963, March 19 and July 23 of 1964, further letters requesting this information, including financing and marketing were addressed to them.

The Commission's order, which was issued on August 19, [1965] specifically stated, as of that time the applicant was still deficient as to information regarding financing of the project and information on availability of markets of electric power.

It specifically directed that the applicant include in its filing a full and complete statement of the definite plan for financing and for marketing.

Now in light of these facts, silence on the part of Staff might be construed that Staff for its purposes has regarded the applicant's submission as adequate. This is not the case. The Staff regards the evidence on financing as still deficient,

[39]

and has grave doubts as to the sufficiency of the evidence with regard to market.

* * *

[65]

* * *

MR. McCARTY: I would like to state by way of attempting to clarify myself in connection with stage 3, its status in the proceeding is not entirely clear to me. I take it it is here floating around in some fashion or another. And what may be done with it may be not entirely dictated by what the applicant may desire. In any event, I take it that as intervenors we are on our mettle to comment as we see fit, and to examine as we see fit, in connection with stage 3, since it remains in the proceeding as of now.

[65, 78-80]

We intend to do that in terms of evidencing as best we can facilities that we have examined on the southfork of the White River, which in our judgment would better constitute comprehensive development rather than focusing on that, the District will consider the filing of an application for a permit for those facilities.

* * *

[78]

* * *

PRESIDING EXAMINER: You are not asking for a license with respect to stage 3 at this time, are you? Or are you?

MR. BRANNAN: Mr. Examiner, I don't know quite how to respond

[79]

to that, but I must and I will.

I suppose in the final analysis we are trying to make a record upon which we can come to you and say, at this moment we would like authorization of stages 1 and 2.

[80]

PRESIDING EXAMINER: And what order do you want me to make, if any, with respect to Stage 3?

MR. BRANNAN: That the Commission reserves the right to act upon Stage 3 at a later date, that is all we want.

Let me just elaborate a bit further.

Let's assume that we secure a sufficient firm power contract for the output of Stages 1 and 2. But at this moment we don't have a firm power contract for Stage 3. I don't see how the public interest could be in any wise jeopardized if this Commission were to say All right, go ahead and build Stages 1 and 2, you have demonstrated that it is feasible—and I assume the Commission will not if we have not demonstrated it is feasible—you have demonstrated feasibility, and you have demonstrated that it can be paid for, and you

have demonstrated where you are going to get the money, go ahead and start on that.

And once we have convinced a number of power users we are really going to be in the power business, we are then successful in selling additional power, maybe to the same people or to additional people, so we come back and we say, we have power contracts now here for twice as much power as Stage 1 and Stage 2 will develop, and we would like not, on the basis of the evidence before you, whatever additional evidence is pertinent and necessary, to now exercise the reservation which you made in the first order,

[81]

and let us put in two additional pump storage units at Sweetwater, or to put in additional pump storage unit at the Los Solar plant, and fulfill the additional demand.

PRESIDING EXAMINER: Wouldn't the Commission have the right to exercise that power even absent a reservation of jurisdiction at this stage?

MR. BRANNAN: I would assume that the Commission would. But we are also anxious that because the ultimate project, the two million kilowatt hours which we hope to be able to generate all will come from a very closely integrated set of facilities, that we be permitted to make our complete showing about our ultimate objective at this time, and let the Commission either act upon it as a part of this application No. 2289, or if it sees fit to say Let's take the record in 2289 that is pertinent and put it under a new number, and you ask for this right under a new number, then that doesn't bother us either.

* * *

[90]

* * *

PRESIDING EXAMINER: Mr. Foster, your motion to strike is denied for the reasons urged by counsel, and also by reason of the fact that I regard it as a motion, the granting of which, would constitute a final decision with respect

[90, 97, 109]

to a portion of the case, and such a motion I am not empowered to grant under Rule 1.12(3) of the rules of practice and procedure.

However, I will make this ruling without prejudice to your submitting to me, in writing, a similar motion by May 9, with the request that I refer it to the Commission. And I shall take that request under consideration if you care to make such a motion.

Applicant will respond to that motion by May 16, if it is made.

* * *

[97]

* * *

PRESIDING EXAMINER: I would like to give Mr. Brannan a little more time to respond to this motion than the Commission fixed in its August 19, 1965 order to respond to motions to strike.

I will fix May 2nd as the date upon which a motion to dismiss may be filed by Mr. Foster, or by any other participant, and May 12th as the date for responses to any such motion.

* * *

[109]

BEFORE THE FEDERAL POWER COMMISSION APPLICATION FOR LICENSE

1. Rocky Mountain Power Co., a corporation organized under the laws of the State of Colorado and having its office and principal place of business at Denver in the State of Colorado, hereby makes application to the Federal Power Commission for a license to authorize the construction, operation and maintenance of certain project works fully described herein.
2. The name, title and post office address of the person to whom correspondence in regard to this application will be addressed is as follows:

Mr. Smith W. Brookhart, Attorney
Brookhart, Becker & Dorsey
1700 K Street, N.W.
Washington 6, D.C.

3. The applicant is a corporation and is organized under the laws of the State of Colorado.
4. The total authorized common capital stock is 200,000 shares, and the measure of control or ownership exercised by the applicant in any other organization or over applicant by any other organization is as follows:

[110]

6. A concise general description of the project and the principal project works is as follows:

Water for the proposed Sweetwater Hydroelectric Project would be derived from areas situated high on the White River Plateau, a table-land ranging in elevation from 10,000 to 12,000 feet. This plateau and its surrounding slopes comprise an area of approximately 1,400 square miles. Lying as it does some sixty miles west of the Continental Divide, it is favorably situated to intercept water-laden air traveling eastward from the northwestern states. The high areas of the plateau have a rate of precipitation per square mile greater than the peaks of the Continental Divide, which have elevations of more than 14,000 feet. Various streams

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F. P. C. Page 3

and their tributaries arising on the plateau are entrenched in it. Colorado River, rising on the Continental Divide to the east, has channeled deeply along the south edge of the plateau.

It is proposed to route project water, collected at high altitudes from tributaries of the Colorado and White Rivers, through two powerplants developing about 2,700 feet of head, and discharge the water into Colo-

[111-112]

rado River at about elevation 6,200. Project powerplants would have a rated capacity of 450,000 kilowatts, producing 299,000k000 kolowatt-hours of energy annually for sale.

The principal storage feature of the project is Meadows Reservoir, to be constructed on South Fork of White River. The dam for this reservoir would be 260 feet high. The stream bed in the dam site is at elevation 9,000; the maximum water surface in the reservoir would be at elevation 9,247; the crest of the dam would be at elevation 9,260.

A tunnel and pipeline would conduct water from Patterson Creek and Wagonwheel Creek into Meadows Reservoir. Deep Creek would be diverted into Buck Creek which flows into Meadows Reservoir. Pipelines and tunnels are planned to conduct Sweetwater Creek, Dry Sweetwater Creek and Turret Creek to the Plateau Tunnel and the Sweetwater Conduit. Water would enter the conduit under sufficient pressure to force the flow westward for storage in Meadows Reservoir, or in the opposite direction, to generate energy at the Sweetwater and Dotsero Powerplants.

[112]

F. P. C. Page 4

The Sweetwater Powerplant would have a gross design head of 1,310 feet. This powerplant would discharge into Sweetwater Lake, which would be raised from its present elevation of 7,710 to 7,770 to provide afterbay pondage. From the afterbay, water would flow through the Irrawaddy Conduit to the Dotsero Powerplant, where it would be discharged into Colorado River. The Dotsero Powerplant would have a gross design head of 1,445 feet.

A 230 kilovolt wood-pole transmission line, ten miles long, would connect the two powerplants.

* * *

[113]

* * *

* * *

[115]

State of Colorado)
) ss
City and County of Denver)

That he is the President of Rocky Mountain Power Co., the applicant for a license, that he has read the foregoing application and knows the contents thereof, and that the same are true to the best of his knowledge and belief.

Subscribed and sworn to before me this ____ day of _____, 19____.

My commission expires April 24, 1961

DEPARTMENT OF
STATE

CERTIFICATE OF
AUTHORITY

I, George J. Baker,

Secretary of State of the State of Colorado, do hereby certify that
on the TWENTY-THIRD day of SEPTEMBER, A.D. 19 53, at the hour of 10:30
o'clock A.M. there was filed in my office a Certificate of Incorporation of

ROCKY MOUNTAIN POWER CO.
(A COLORADO CORPORATION)

And I do further certify that the aforesaid Corporation has made full
payment of all fees and taxes prescribed by law to be paid to the Secretary of
State and due at the time of the issuance of this certificate.

In Testimony Whereof, I have hereunto set my hand and
the Great Seal of the State of Colorado, at the City
of Denver, this TWENTY-THIRD day of SEPTEMBER,
A.D. 1953

Geo. J. Baker

SECRETARY OF STATE

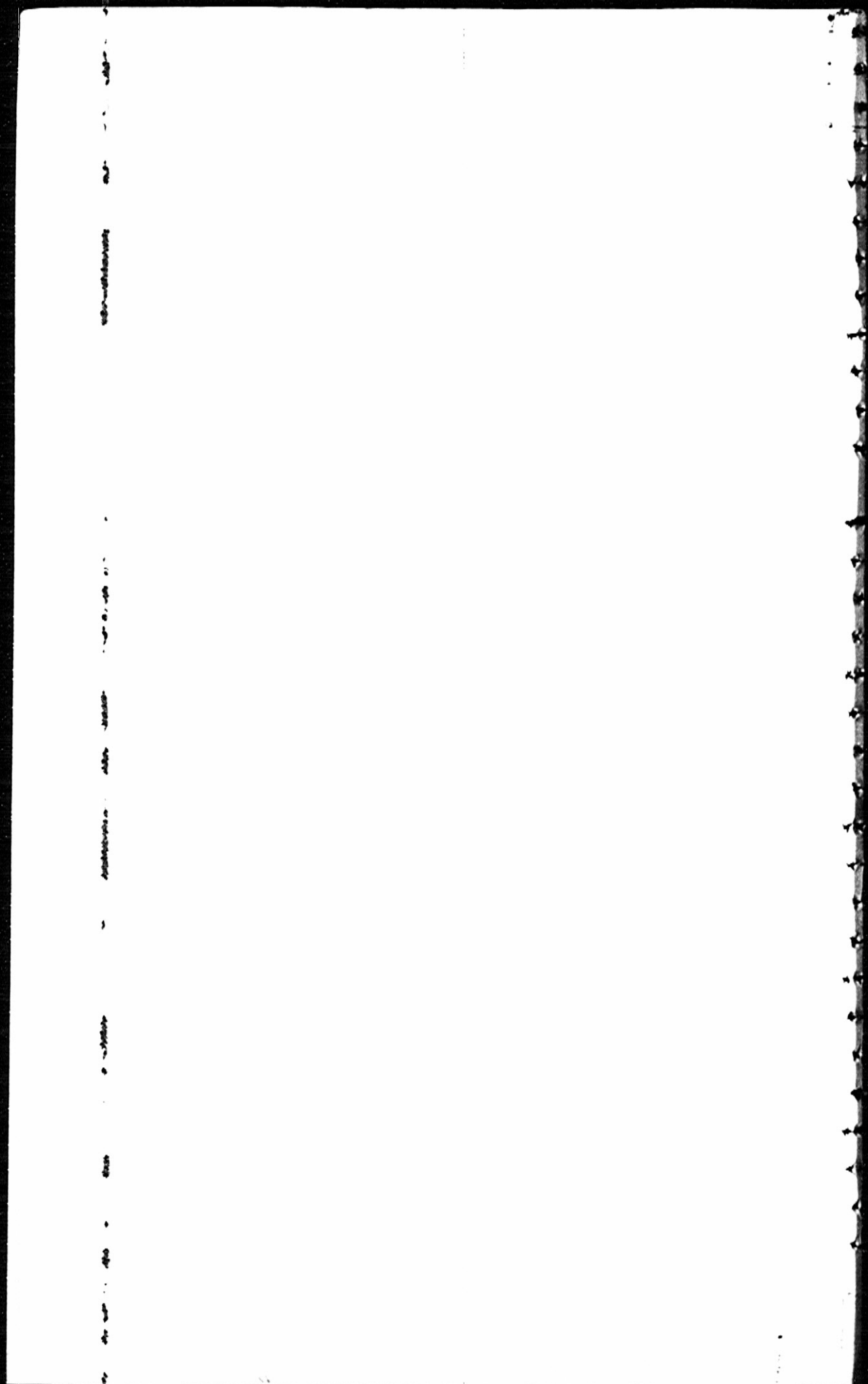
J. J. Teragisi

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[131-132, 135, 170]

[131]

EXHIBIT B

ROCKY MOUNTAIN POWER CO.

CORPORATE MINUTES
AND
RESOLUTIONS

[132]

* * *

Special meeting of the Board of Directors of Rocky Mountain Power Co. was held pursuant to call and notice on the 11th day of June, 1960, at the hour of 11:10 A. M.

* * *

[135]

"Resolved that Van Sickle Associates, Inc. shall be reimbursed for right-of-way and gauging station expenditures by Rocky Mountain Power Co."

* * *

[170]

[Rec'd Jan. 5, 1961, Federal Power Commission]

EXHIBIT O
TIME DESIRED FOR CONSTRUCTION
OF PROJECT WORKS

It is desired to begin construction of the project works in the Spring of 1961 and complete it by the Spring of 1964.

* * *

[171]

[171]

Files 1

Project No. 2289
Rocky Mountain Power Company, Colorado

Feb. 2, 1961

Mr. Smith W. Brookhart
Attorney
Brookhart, Becker & Dorsey
1700 K Street, N.W.
Washington 6, D.C.

Dear Sir:

This refers to the application for major license filed by Rocky Mountain Power Company, of Denver, Colorado, for proposed major project on South Fork of White River, Deep Creek, and Sweetwater Creek, tributaries of Colorado River, in the State of Colorado.

The Commission staff has reviewed the application and its exhibits and finds that the information contained therein is not in sufficient detail to enable the Commission staff to have a full understanding of the proposed project and to check the safety, adequacy, and desirability in the development of the resources involved. Accordingly, the information outlined below is requested.

Exhibit G of the application shows that you have not made an adequate showing of ability to finance the project, nor has applicant furnished sufficient information with respect to the market for the project output. It is requested, therefore, that you submit an economic feasibility report on the project including a report on the power market. With respect to the latter more information is desired concerning your negotiations with the Public Service Company of Colorado.

An Exhibit I should be submitted in conformance with

[171-172]

the Commission's rules and regulations. Please refer to pages 32 and 33 of the Excerpts, copy of which is enclosed.

While the Commission permits filing of Exhibit K drawings at a date subsequent to issuance of a license, such deferment is predicated on the inclusion, on Exhibit J drawing, of boundary and land ownership information to the extent necessary for proper understanding of that phase of the project.

Additional Exhibit L general design drawings should be submitted showing plans, elevations and sections of the following project works: Sweetwater and Dotsero power plants; spillways at Meadows dam and Sweetwater dam; substations, and transmission facilities to interconnect

[172]

lines beyond the project; Patterson Creek tunnel; Deep Creek tunnel; Turret tunnel; Sweetwater and Irrawaddy siphons; drop pipes (at Plateau and Turret tunnels); and information on appurtenant works of other features of the project, of which the "slide gate shaft" between Meadows reservoir and Plateau tunnel is typical.

A complete profile is desired of the water transportation facilities, with elevations shown at all determinant stations so that the feasibility of system operation can be reviewed. Specifically, the proposed reversal of flow through the Plateau tunnel, the use of the siphons and drop pipes, and transportation of Sweetwater Creek, Dry Sweetwater Creek, and Turret Creek water to the Plateau tunnel as well as to the Sweetwater conduit, are items of major importance.

Clarifying as well as design information is requested on the proposed Deep Creek tunnel which, on Exhibit J drawing, is shown as running from Deep Lake to Buck Creek, with Deep Lake presumably the source of Deep Creek which, however, is not shown on that drawing.

It is desired that you submit results of core boring data, if any, made at Meadows dam and other diversion dams to-

[172]

gether with copy of available geology reports; also, a report on soils analysis and availability of the fill material to be used in the earthen dams.

Spillway design criteria for the major dams should be submitted, including such items as hydrologic data and assumed discharge coefficients.

Preliminary review of Exhibit L drawings reveals the following discrepancies: On Exhibit L (Sheet 1) the section entitled "Crest Detail at Maximum Camber" shows an elevation 9052 which apparently should be elevation 9252. It is also noted that while page 3 of the application gives the maximum water surface as elevation 9247, Exhibit L (Sheet 1) shows it to be elevation 9252. It is suggested that an over-all review by the applicant of these drawings may eliminate other similar inconsistencies.

Exhibit N should be supplemented by a detailed breakdown of the items to be included in the project. This breakdown should show unit costs and material quantities. Exhibit N should also show estimated cost data for transmission lines, if any, which may be planned in addition to the Sweetwater-Meadows 13.2 kv line.

The tracings of Exhibits J and L will be returned to you in person, in accordance with your verbal request, for revision.

Very truly yours,

J. H. GUTRIDE
Secretary

Enclosure No. 107666
"Excerpts"

[174⁴175]

[174]

Files - 1

Project No. 2289

Rocky Mountain Power Company, Colorado

Mar. 17, 1961

Mr. Smith W. Brookhart
Attorney
Brookhart, Becker & Dorsey
1700 K Street, N.W.
Washington 6, D.C.

Dear Mr. Brookhart:

This letter is in reference to recent discussions between you and members of the Commission staff relative to the application for license filed by Rocky Mountain Power Company for the proposed Sweetwater Hydro-electric Project.

* * *

[175]

We anticipate that the economic feasibility report, including a report on the power market, referred to in our February 2 letter, will be submitted by the applicant when it becomes available, with also any report on the study of rate determinations and of the general feasibility of the project which we understand is currently being conducted jointly by the applicant and representatives of Public Service Company of Colorado. It is understood that the financing of the project is contingent upon a long-term contract or lease with the Public Service Company of Colorado for the purchase of power to be generated by the project.

* * *

Very truly yours,
J. H. GUTRIDE
Secretary

JA 21

[222]

[222]

[Received Jun 28 2 56 PM '61 Federal Power Commission]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

* * *

Rocky Mountain Power Company) Project No. 2289

NOTICE OF INTERVENTION

The Public Utilities Commission of the State of Colorado (PUC), pursuant to Section 308 of the Federal Power Act, as implemented by Sections 1.8 and 1.37(f) of the Commission's Rules of Practice and Procedure, herewith files its Notice of Intervention in the above-docketed proceeding, and in support thereof, states:

- (1) PUC is the regulatory body of the State of Colorado having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within said state; and accordingly, PUC is a State Commission within the meaning of Section 3(15) of the Federal Power Act.
- (2) That the above-docketed proceeding concerns an application filed under the Federal Power Act for a license for proposed Project No. 2289, to be located on South Fork of White River and Sweetwater Creek, in Garfield and Eagle Counties, Colorado.
- (3) That said proposed project would be used to generate hydroelectric power for sale and resale within said State of Colorado.
- (4) That PUC, as the State Commission within the State where the hydroelectric power is to be generated and sold for resale, has an immediate and direct interest in this proceeding.
- (5) Correspondence or communication in regard to this intervention should be addressed as follows:

[222-223]

Jacob Goldberg,
Special Assistant Attorney General
1832 Jefferson Place, N. W.
Washington 6, D. C.,

with copies as follows:

[223]

Joseph F. Nigro, Chairman
The Public Utilities Commission
of the State of Colorado
506 State Services Building
1525 Sherman Street
Denver 3, Colorado.

Wherefore, The Public Utilities Commission of the State of Colorado, by filing of this Notice of Intervention, hereby gives notice that it intervenes in the above-docketed proceeding, so that it may participate fully as a party herein, with the right to have notice of, and to appear at all hearings, to produce evidence and witnesses, to cross-examine witnesses, and to be heard by counsel or other representatives upon brief or oral argument, and to do any and all things which it deems requisite as a party herein.

Respectfully submitted,

THE PUBLIC UTILITIES COM-
MISSION OF THE STATE OF
COLORADO

By: /s/ Joseph F. Nigro
Joseph F. Nigro, Chairman

DUKE W. DUNBAR, Attorney
General of the State of
Colorado

By: /s/ John J. Conway
John J. Conway, Assistant
Attorney General

506 State Services Building
1525 Sherman Street
Denver 3, Colorado

/s/ Jacob Goldberg
Jacob Goldberg, Special
Assistant Attorney General
1832 Jefferson Place, N.W.
Washington 6, D.C.,
Attorneys for The Public Utilities
Commission of the State of
Colorado.

[336]

Files - 1

Project No. 2289-Colorado
Rocky Mountain Power Company

Mar. 30, 1962

Mr. Smith W. Brookhart
Attorney
Brookhart, Becker & Dorsey
1700 K Street, N.W.
Washington 6, D.C.

Dear Sir:

This refers to the application for major license filed on January 5, 1961, supplemented April 19, 1961, by Rocky Mountain Power Company, of Denver, Colorado, for its proposed Sweetwater Hydroelectric Project (No. 2289) on South Fork of White River, Deep Creek, and Sweetwater Creek, tributaries of Colorado River, Colorado. Reference is also made to the Commission's letters dated February 2, 1961, and March 17, 1961, requesting additional information. Applicant has supplied certain information in response to these letters.

A review of the application reveals that applicant has not made an adequate showing of ability to finance the project; nor has applicant furnished sufficient information with respect to the market for the project output. It is our understanding that the financing of the project is contingent upon a long-term contract or lease with a purchaser of the power to be generated by the project. Also, an economic feasibility report, including a report on the power market, referred to in our February 2, 1961 letter, has not been furnished by applicant. Preliminary studies made by the Commission staff show the project to be economically infeasible, assuming that the area served by the Public Service Company of Colorado would be the power market area.

[336, 338]

The Commission has instructed the staff to clear the docket of inactive applications, so that if you do not desire to have the application actively processed at this time, it is suggested that you apply for its withdrawal or the staff will recommend that it be dismissed if the balance of the information requested in its aforesaid letters is not received within 60 days.

Very truly yours,

J. H. GUTRIDE

Secretary

PWR

Ronka, A.H:Crum,T.M:mph

3/27/62

cc FWRO

OGC

DLP

[338]

[Received May 4, 1962 Federal Power Commission]

[Filed Office of the Secretary May 4, 2:27 PM '62 Federal Power Commission]

BROOKHART, BECKER & DORSEY

1700 K Street, N.W.

Washington 6, D.C.

May 4, 1962

Federal Power Commission

441 G Street, N.W.

Washington 25, D.C.

Re: Rocky Mountain Power Company,
Sweetwater Hydro-Electric
Project No. 2289.

Gentlemen:

There is submitted herewith supplemental material by way

[338-339]

of additions to the above application for license relating to an alternate scheme for the portion of the project between Meadows Reservoir and Sweetwater Lake.

Submitted herewith are:

Additions to page 4 and 5 of the application;

Exhibit J 1 - Map of Pumped Storage Scheme;

Exhibit L 32 - Alternate Plateau - Turret Tunnel;

Exhibit N 1 - Estimated Cost of Pumped Storage Scheme,
Initial Construction of Sweetwater Plant.

Referring to your communication dated March 30, 1962, you are advised that negotiations with purchasers of the power to be generated by the project have progressed to a point where an agreement is believed to be imminent.

Information concerning such agreement will be furnished promptly, together with information necessary to establish the economic feasibility and proposed financial arrangements for completing the project.

Under these circumstances, it is requested that any recommendations as to disposition of the application be deferred to permit examination of the later submitted material.

Sincerely yours,

Smith W. Brookhart
Attorney for Applicant

[339]

[Received May 4 1962 Federal Power Commission]

ROCKY MOUNTAIN POWER CO.
DENVER, COLORADO

*BEFORE THE FEDERAL POWER COMMISSION
APPLICATION FOR LICENSE*

(Additions to F.P.C. Pages 4 & 5.)

6. An alternate scheme for the portion of the project between Meadows Reservoir and Sweetwater Lake would be as follows:

The Sweetwater Powerplant would be a pumped storage plant, having a gross design head of 1,330 feet for generating and 1,440 feet for pumping. This powerplant would be located on Sweetwater Lake, which would be raised from its present elevation of 7,710 to 7,740 to provide 3,000 acre-feet of pondage in a drawdown of 20 feet.

The forebay would be located on the south side of Sweetwater Creek, having a capacity of 3,000 acre-feet between elevations 9,070 and 9,130. A tunnel would connect the forebay directly to Meadows Reservoir. Sweetwater Creek, Dry Sweetwater Creek and Turret Creek would not be conducted to this tunnel, but would flow naturally into Sweetwater Lake.

9. The proposed initial and ultimate schemes of development for the project would be as follows:

	<i>Initial</i>	<i>Ultimate</i>
Sweetwater Powerplant	165 MW	495 MW
Dotsero Powerplant	0	210
Total	165 MW	705 MW

* * *

[342A-342B]

[342 A]

Files - 1

Project No. 2289-Colorado
Rocky Mountain Power Company

May 31 1962

Mr. Smith W. Brookhart
Attorney
Brookhart, Becker & Dorsey
1700 K Street, N.W.
Washington 6, D.C.

Dear Sir:

This refers to your letter dated May 4, 1962, transmitting supplemental material concerning an alternate scheme of development of a portion of the proposed Sweetwater project No. 2289 located on certain tributaries of the Colorado River in Colorado, and requesting that any disposition of the applications be deferred to permit examination of additional material to be submitted at a later date.

* * *

[342 B]

We note in your letter of May 4 that negotiations with purchasers of the power to be generated by the project have progressed to a point where an agreement is believed to be imminent and that information concerning such agreement will be furnished promptly together with information necessary to establish economic feasibility and proposed financial arrangements for completing the project.

* * *

Very truly yours,

J. H. GUTRIDE
Secretary

PWR
Ronka, A.H.:crum, T.M.:mph
5/22/62

cc: FWRO; OGC; DLP

JA 29

[368]

[368]

Mar 20 1963

Smith W. Brookhart, Attorney
Brookhart, Becker and Dorsey
1700 K Street N.W.
Washington 6, D.C.

4 Gentlemen:

This is in reference to your letter of February 7, 1963, in which you state that a revised application is being prepared for submission to the Federal Power Commission for proposed Project No. 2289, located on the White River and Sweetwater Creek, in Garfield and Eagle Counties, Colorado.

It is also stated that the applicant will request an opportunity for conferring with the staff of the Commission to discuss the revised application, with particular reference to the relatively new concept of pumped storage in combination with conventional hydro power.

However, before a license can be issued for the proposed project or a pumped storage project, it is required that you furnish to the Commission, the evidence of a firm commitment for sale of the proposed power to be generated and a firm commitment in regard to financing the proposed construction.

By letters dated February 2, 1961 and May 31, 1962, the Commission requested such information. Over two years have now elapsed since the original filing of the application and the requested information has not been submitted.

You are again being requested to file the required information regarding the sale of power and project financing, and if it is not received within ninety (90) days of the date

[368, 370, 374]

of this letter, a recommendation for the dismissal of the application for Project No. 2289 will be made to the Commission.

Very truly yours,

J. H. GUTRIDE
Secretary

PWR
Murto, H.C.:emm
3/7/63

[370]

ROCKY MOUNTAIN POWER CO.
DENVER, COLORADO

*BEFORE THE FEDERAL POWER COMMISSION
APPLICATION FOR LICENSE*

(Additions to F.P.C. Application Pages 4 and 5)

* * *

10. The proposed market is that of a contemplated regional power pool, for a combination Salt River Project load, Colorado Ute Electric Association load, and any private utility interested.

[374]

EXHIBITS H AND I

THE SWEETWATER HYDROELECTRIC PROJECT

A development for peaking capacity, based on pumped storage generation supplemented by stored runoff on the White River and Sweetwater Creek drainage basins, tributary to the Colorado River in Colorado.

I. INTRODUCTION

The geographical location of the project is unique because it integrates:

- (a) The high-head peaking and pumped-storage capa-

[374-375]

bilities of the upper drainage of the Colorado basin in the High Rockies.

- (b) The interconnected power system of the Colorado River storage project, which includes the hydro facilities of Glen Canyon, Curecanti and Flaming Gorge. (See map, Appendix 1)
- (c) The larger privately owned power systems, largely based on thermal generation, of the States of Utah, Colorado, Arizona and New Mexico.
- (d) The various publicly owned utility facilities in the States of Wyoming, Utah, Colorado, Arizona and New Mexico.

The introduction of the interconnected power system of the Colorado River Storage Project will make it possible for the various public and privately owned utilities to operate on a co-ordinated and integrated pool basis, to utilize to the maximum both the efficiency of the thermal generating facilities and use of the natural resources of this region.

[375]

2

To achieve optimum utilization, the new high-efficiency thermal plants with their larger generating units will tend to operate at a high annual load factor on the base of the regional load, while the hydro plants will provide the maximum peaking capacity in addition to the envisaged base energy.

The geographic location of the Sweetwater project enhances this regional co-ordinated integration, because the project is located in the northern half of the region roughly in line with Salt Lake City and Denver, whereas the Curecanti and Glen Canyon hydro facilities are in the Southern half. This increases the capability of the regional interconnection facilities because the distance of transmission of peak power from hydro and/or pumped-storage facilities will be reduced.

Recent studies in connection with the Bureau of Reclamation proposed "yardstick" transmission system have revealed that heavy line loading will occur on power flows east from Glen Canyon to Four Corners, northeast from Four Corners to Curecanti and northwest from Curecanti to Craig and Rangeley, and on westwards into Utah. The Sweetwater Project is ideally placed to reduce the peak loading and losses on these lines, or conversely, increase transmission capability by power displacement.

The benefits of co-ordinated integration of utility facilities have been proved in the Pacific North West, and these benefits are now acknowledged

[376]

3

nationally by the Department of the Interior. Such policy not only ensures conservation of the natural resources but more particularly establishes a prudent use of the available water which is expected to become ever more critical as time marches on.

* * *

[379]

* * *

4. *THE PROJECT*

The main reservoir will be created on the White River at Meadows. This will be connected by a tunnel aqueduct system with the forebay supplying the Sweetwater power and pumped-storage plant. The plant will discharge into Sweetwater Lake. Sweetwater Lake will be raised in level from 7,711 to 7,770 feet to provide both:

- (a) a balancing reservoir for Sweetwater when acting as a pumped-storage plant, and
- (b) a regulating reservoir for the water releases from Meadows dam via the Sweetwater plant and lake to the Dotsero plant.

[379-380]

From Sweetwater Lake, water will be conveyed via the Irrawaddy aqueduct system (mainly pipeline) to the Dotsero regulating forebay, which will supply Dotsero power plant, a conventional peaking hydro station, discharging into the Colorado River. A balancing tail-water reservoir is provided at Dotsero to regulate the releases into the Colorado River, thus eliminating flash discharges.

[380]

7

The pumped storage principle of operation has not been applied to the Dotsero plant because:

- (i) There is no site available to give a tailwater or suction pool when pumping of adequate size and comparable to the 3,000 acre-feet available in Sweetwater Lake.
- (ii) The Sweetwater discharge from Dotsero cannot be mixed with the Colorado River water because the high quality and purity of Sweetwater makes it particularly suitable for domestic use; hence a reservoir on the Colorado River is impracticable.

The first stage of development of the project is the construction of Sweetwater Power Plant on Sweetwater Lake. This is a pumped-storage plant, using the lake, raised in level, as a suction pond and pumping up to the forebay on the south side of Sweetwater valley. In this first stage, two 82.5 megawatts generating units will be installed to give an initial capacity of 165-megawatts.

The second stage comprises a second pair of machines at Sweetwater, increasing capacity to 330-megawatts.

The third stage consists of a further pair of machines at Sweetwater of 82.5 megawatts each and the installation of 210-megawatts of hydro generation at the Dotsero Power Plant on the Colorado River, giving

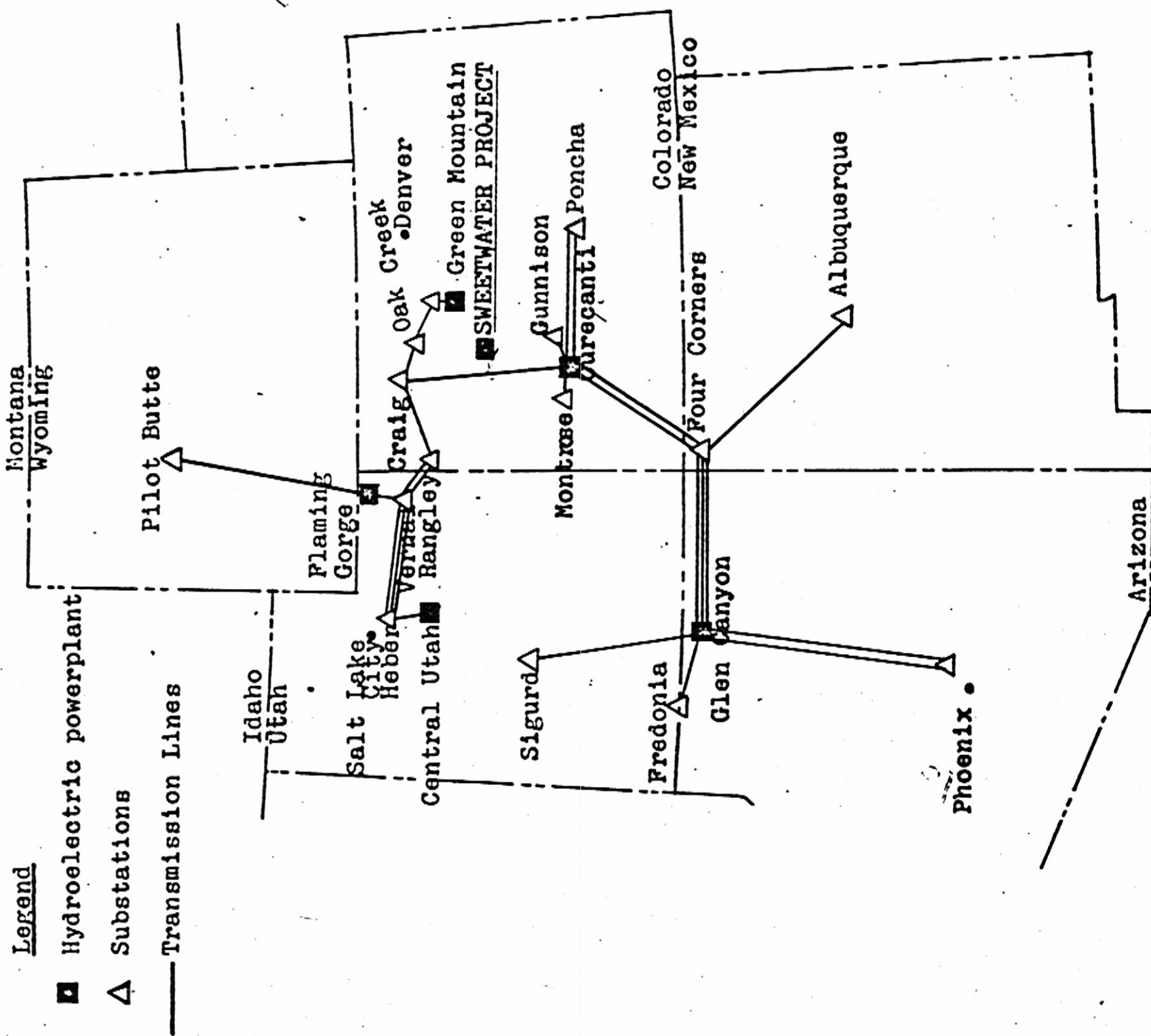
the project a total installed capacity of 705-megawatts.

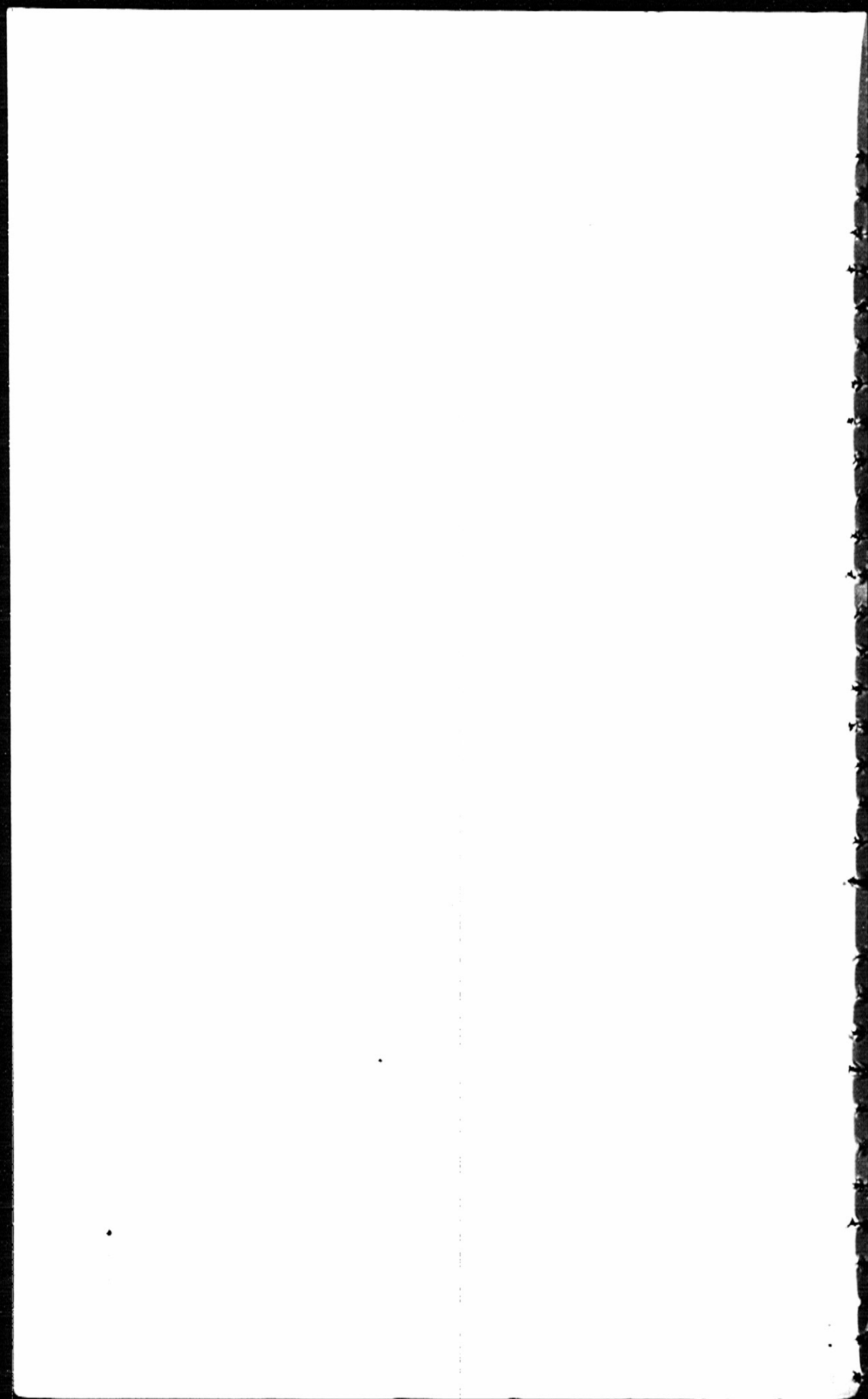
The main storage reservoir at Meadows, in the adjoining White River Catchment, can be brought into operation in the second or third stage depending on the requirements of the region. This storage provides the regulated water releases necessary for Dotsero plant. These releases also supplement the peaking potential of the Sweetwater plant.

Owing to its shorter construction period, the Sweetwater pumped-storage installation constitutes the initial development. The remaining stages can be scheduled to suit anticipated requirements.

* * *

COLORADO RIVER STORAGE PROJECT
PROPOSED FEDERAL TRANSMISSION SYSTEM





[408]

*EXHIBIT O**TIME DESIRED FOR CONSTRUCTION
OF PROJECT WORKS*

It is desired to begin construction of the project works in the Spring of 1963 and complete it by the Spring of 1966.

* * *

[414]

* * *

The Sweetwater Hydroelectric Project has been altered to include a pumped-storage scheme. Plans call for the Sweetwater Powerplant to be located approximately 3,000 feet downstream from the original site and pumped-storage facilities above this site at Lake Creek (Sweetwater Forebay), along with necessary auxiliary structures. Total generating head will be 1,349 feet and ultimate powerplant installation will include 6 generators, to be used alternately as pumps, having a total maximum output of 495,000 kilowatts.

Introduction of the pumped-storage scheme has made necessary the elimination of some features formerly included in the project, the change of location of other features, and also the introduction of new features never before included in the project. Features eliminated by introduction of the pumped-storage scheme are the Turret Tunnel and the Turret Diversion Dam and Pipeline. New features made necessary by introduction of the pumped-storage scheme include the Cross Creek Tunnel, Cross Creek Conduit, Forebay Tunnel, and Penstock Tunnel. Features with new locations include the Sweetwater Powerplant, Sweetwater Penstock, Sweetwater Forebay, Sweetwater Siphon, and Plateau Tunnel. For location, see Figure 1.

* * *

[417]

* * *

General Description:

The Sweetwater Forebay Dam is the last storage feature

[417, 431, 998]

above the powerplant and is the principal feature in the pumped-storage scheme. It will hold water from Meadows Reservoir and recirculated water pumped up from the Sweet-water Powerplant.

The height of the dam above stream level will be 195 feet, with a crest length of 2,040 feet. Volume in the dam will be approximately 3,142,000 cubic yards, and reservoir capacity will be approximately 3,000 acre-feet.

* * *

[431]

REGIONAL GEOLOGY

GEOGRAPHIC FEATURES

Location:

The project is located on the southern end of the White River Plateau which lies about 60 miles west of the continental divide in northeastern Colorado. The "Flat Tops" of the Plateau range from 9,000 to 12,000 feet in elevation and cover about 1000 square miles. Streams are deeply entrenched in the Plateau and the Colorado River has channelled along the southeastern edge down to elevation 6,200. Project features range in elevation from 6,200 to 10,500 feet and use water from a drainage area of 124 square miles. The Meadows Reservoir, at the upper end of the project, is the principal storage feature. * * *

[998]

[Received Jan 20 400 PM '63 Federal Power Commission.]

1963 JUN 20 PM 3 03

UDA114 WA333

(UD) (WA255) PD WASHINGTON DC 20 1205P EDT

FEDERAL POWER CO, ATTN J H GUTRIDE

DLR 441 G ST NORTHWEST WASHDC

REFERENCE PROJECT NUMBER 2289- COLORADO-
ROCKY MOUNTAIN POWER COMPANY, REQUEST EX-
TENSION OF SIXTY DAYS WITHIN WHICH TO SUPPLY

JA 40

[998-999]

INFORMATION REQUESTED IN LAST PARAGRAPH OF
YOUR LETTER OF MARCH 20 1963 AND IN CONFER-
ENCE WITH YOUR OFFICIALS ON MARCH 27 1963. IN
SUPPORT OF THIS REQUEST YOU ARE ADVISED THAT
A HEARING ON WHITE RIVER WATER RIGHTS CON-
CLUDED ON JUNE 13 DISTRICT COURT OF GARFIELD
COUNTY MEEKER COLORADO. NEW FINANCING PRO-
GRAM TO BE CONSIDERED BY BOARD OF CENTRAL
INVESTMENT COMPANY OF ENVER AND DISCUSSIONS
UNDER WAY FOR SALE OF POWER WITH BUREAU OF
RECLAMATION DEPARTMENT OF INTERIOR AND REA
DEPARTMENT OF AGRICULTURE

SMITH W BROOKHART ATTORNEY FOR APPLICANT

[999]

Project No. 2289-Colorado
Rocky Mountain Power Company

Jul 2 1963

Smith W. Brookhart, Attorney
Brookhart, Becker and Dorsey
1700 K Street, N.W.
Washington 6, D.C.

Gentlemen:

This will acknowledge your telegram filed with the Com-
mission on June 20, 1963, requesting an extension of sixty
days within which to supply the information requested in
the Commission's letter of March 20, 1963, for proposed
Project No. 2289 to be located on the White River and
Sweetwater Creek, in Garfield and Eagle Counties, Colorado.

The time within which to comply with the Commission's
request of March 20, 1963, i.e., the evidence of a firm com-
mitment for the sale of the proposed power to be generated
and a firm commitment in regard to financing the proposed
construction, is hereby extended to August 30, 1963.

Very truly yours,

T. H. GUTRIDE

Secretary

[1000]

[1000]

Files

20426

Project No. 2289 - Colorado
Rocky Mountain Power
Company

PWR
Ronka, A.H.:ali (Ind. Ave.)
7/24/63

cc: FWRO
OGC
DLP
SEC

Smith W. Brookhart, Attorney
Brookhart, Becker and Dorsey
1700 K Street, N.W.
Washington 6, D.C.

Dear Sir:

This refers to the Commission's July 2, 1963, letter, to you, which extended to August 30, 1963, the time for your filing of evidence of a firm commitment for the sale of the proposed power to be generated and a firm commitment in regard to financing the construction by Rocky Mountain Power Company of its proposed Sweetwater Project, designated as Project No. 2289 - Colorado.

The Commission staff has reviewed the data submitted by the Applicant as amendments and/or additions to the original application and whereby a pumped storage-conventional hydro combination has been proposed as an alternative to the originally proposed conventional hydroelectric project.

The staff's review has shown that the application for license as revised, amended, and supplemented, is not acceptable as it now stands. In addition to the information requested in the above mentioned letter, the Applicant is requested to assemble, in a unified and revised application for license, all the data and information on the proposed alternative project which have been filed with the Commission on various dates as exhibits or supplemental data.

[1000-1001]

The revised application and all exhibits should conform to the requirements stated in the Commission's regulations. It is suggested that the "Contract Documents," which have been submitted by the Applicant, be considered supplemental to, rather than exhibits in the revised application.

The revised application should be submitted concurrently with the other information requested.

Very truly yours,

J. H. GUTRIDE

Secretary

[1001]

[Received Aug 27 8 56 AM '63 Federal Power Commission.]

ROCKY MOUNTAIN POWER CO.

275 University Blvd. - Denver 6, Colorado

TELEPHONE: 388-4291

August 24, 1963

Federal Power Commission
Washington 24, D. C.

Gentlemen:

Re: Project No. 2289 - Colorado
Rocky Mountain Power Company

The above-numbered Application for License is in the process of revision to unify all features of the project covering its pumped storage-conventional hydroelectric character.

During the period since June 21, 1963, when our counsel wrote your Commission, negotiations with the Rural Electrification Administration (REA) have resulted in an expressed intention by that body to approve the purchase by Great Plains Generation and Transmission Cooperative, Albuquerque, New Mexico, and Colorado-Ute Generation and Transmission Cooperative, Montrose, Colorado, of the prospective power output of Rocky Mountain Power Co., total-

[1001]

ing 330,000 kilowatts, under contracts which will extend for 50 years with renewal options.

Rocky Mountain Power Co., Inc., expects to sign an interim water supply contract this month with the city of Colorado Springs, Colorado, under which the applicant will furnish a minimum of 700 acre-feet per annum for 5 years starting April 1, 1964, and a maximum of 2,000 acre-feet for the same period. Under the terms of this agreement, the first 700 acre-feet per annum would command the price of \$30.00 per acre-foot and the amount above 700 acre-feet will be priced at \$27.50 per acre-foot. Negotiations are in process for a contract with the city of Colorado Springs to acquire long-term rights to purchase 10,000 acre-feet in perpetuity.

Negotiations with the Department of the Interior have resulted in assurances from the Assistant Secretary that an agreement will be forthcoming covering the transmission of power generated by Rocky Mountain Power Co. through the Federal power system. (See attached letter dated July 24, 1963, from Assistant Secretary Kenneth Holum to Attorney Charles F. Brannan).

The above-stated commitments for purchasing power and water assure the financial feasibility of the project. However, the time required for drafting intricate power purchase contracts and a long-term water purchase contract and for the revision of our application for license by your Commission will extend beyond August 30, 1963.

It is therefore respectfully requested that the applicants be granted an additional ninety (90) days in which to submit information required

[1002-1003]

[1002]

by the Commission relating to the financing and construction and to submit a revised application conforming with the Commission's regulations.

Very truly yours,
ROCKY MOUNTAIN POWER CO.

Richard C. Harris
Vice President

[1003]

[Received Aug 27 8 56 AM '63 Federal Power Commission.]

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
Washington 25, D. C.

JUL 24 1963

Dear Charlie:

It was a real pleasure to meet with you, Mr. Van Sickle and Mr. Stevens on July 10 to discuss the proposed Sweetwater hydroelectric project of the Rocky Mountain Power Company. We appreciate the opportunity of having a full discussion of this project and thank you for the reports which you so kindly made available to us.

At such time as you are able to find a customer for this power, we will be pleased to sit down with you or have our Bureau of Reclamation people meet with you and work out

[1003, 1006]

some mutually satisfactory means whereby you may possibly utilize the spare capacity at the Federal power system.

Sincerely yours,

Kenneth Holum
Assistant Secretary

Mr. Charles F. Brannan
Attorney at Law
1575 Sherman Street
Denver 3, Colorado

[1006]

Files
20426

Project No. 2289-Colorado
Rocky Mountain Power Company

SEP 23 1963

Rocky Mountain Power Company
275 University Boulevard
Denver 6, Colorado

Attn: Mr. Richard C. Harris, Vice President

Gentlemen:

This is in reply to your letter dated August 24, 1963, requesting a further extension of time within which to submit the information requested by the staff in connection with your application for license for proposed Project No. 2289 on the White River and Sweetwater Creek, in Garfield and Eagle Counties, Colorado.

By letters dated February 2, 1961, May 31, 1962, March 20 and July 2, 1963, Applicant was requested to submit evidence of firm commitments for the sale of the proposed power to be generated and a firm commitment in regard to financing the proposed construction. On July 2, 1963,

[1006-1007]

Applicant was granted an extension of time to August 30, 1963, within which to submit the information requested.

The Administrator of the Rural Electrification Administration has advised by letter dated September 3, 1963, that in all probability the interested cooperatives and the Applicant will enter into a power purchase contract in the very near future. In view of the interest currently being shown in this matter, a further extension of 90 days from the date of this letter is granted within which the Applicant is to file the aforesaid information. At the same time, a revised and unified application should be filed in accordance with the Commission's rules and regulations showing the project which the Applicant proposes to construct.

Very truly yours,

J. H. GUTRIDE

Secretary

[1007]

[Received DEC 23 2 15 PM '63 Federal Power Commission]

ROCKY MOUNTAIN POWER COMPANY

275 University Boulevard
Denver 6, Colorado

December 23, 1963

Federal Power Commission
Washington 25, D. C.

*Re: Project No. 2289 - Colorado.
Rocky Mountain Power Company.*

Gentlemen:

Applicant submits herewith its revised application amended to show the project that the applicant proposes to construct. The material submitted consists of the original and five copies of:

* * *

JA 47

[1008, 1010, 1019]

[1008]

The power purchase contracts with interested cooperatives are being prepared in the light of the demands and projected needs of such cooperatives considering their probable expansion and growth. The power purchasing cooperatives are located in Arizona, New Mexico, Colorado and Nebraska.

The permanent financing of the cost of construction of dams, power facilities and transmission facilities is being arranged for in conjunction with the power purchase contracts and will be submitted simultaneously with the text of such contracts.

Very truly yours,

Smith W. Brookhart
Attorney

Robert B. Craig
Director

[1010]

* * *

AMENDMENT TO APPLICATION FOR LICENSE NO. 2289

* * *

[1019]

10. The proposed market for the power to be developed by Stages I and II of the project is public agencies in Colorado, New Mexico, Arizona, and Nebraska. Discussions with public agencies in these states have been most encouraging and indicate early completion of sales agreements.

The Department of the Interior has agreed to make available spare capacity of the Federal power system for wheeling Sweetwater power.

* * *

[1130, 1136]

[1130]

20426

Project No. 2289 - Colorado
Rocky Mountain Power Company

MAR 19 1964

Mr. Smith W. Brookhart, Attorney
Brookhart, Becker & Dorsey
1700 K Street, N.W.
Washington 6, D.C.

Dear Sir:

This refers to the "Amendment to Application for License" filed December 23, 1963, with the Commission by Rocky Mountain Power Company for the proposed pumped storage stages I and II of its Sweetwater Project No. 2289 in Colorado. The amendment was filed in compliance with the Commission's July 29, 1963 request that the applicant submit a unified and revised application for license.

It is requested that the applicant advise us on the present status of the negotiations for the sale of power from this project, including the anticipated completion date for those negotiations. Information is also requested on the status of current negotiations on financing the construction of this project.

Very truly yours,

F. Stewart Brown
Chief, Bureau of Power

[1136]

Project No. 2289 - Colorado Mar 19 1964
Rocky Mountain Power Company

Mr. Smith W. Brookhart, Attorney
Brookhart, Becker & Dorsey
1700 K Street, N.W.
Washington 6, D.C.

JA 49

[1136, 1139]

Dear Sir:

This refers to the "Amendment to Application for License" filed December 23, 1963, with the Commission by Rocky Mountain Power Company for the proposed pumped storage stages I and II of its Sweetwater Project No. 2289 in Colorado. The amendment was filed in compliance with the Commission's July 29, 1963 request that the applicant advise us on the present status of the negotiations for the sale of power from this project, including the anticipated completion date for those negotiations. Information is also requested on the status of current negotiations on financing the construction of this project.

Very truly yours,

/s/ F. Stewart Brown,
Chief, Bureau of Power

[1139]

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL ELECTRIFICATION ADMINISTRATION
WASHINGTON 25, D.C.

OFFICE OF THE ADMINISTRATOR

Jun 10 1964

Honorable Joseph C. Swidler
Chairman, Federal Power Commission
Washington, D. C.

Joe:

Dear ~~Mr. Chairman~~:

In reply to your inquiry of March 24th, 1964, and subsequent letter of May 21, 1964, we regret the delay in canvassing our interested borrowers to determine the current status of their negotiations for the proposed peaking power from the Rocky Mountain Power Company.

The principal interest in peaking power from the Sweetwater Hydroelectric Project has come from generation and transmission cooperatives representing 44 borrower distribution cooperatives and rural power districts located in New Mexico, Colorado and Nebraska. In addition, 28 other bor-

power systems in Nebraska, Wyoming and Colorado might be in a position to directly benefit from such peaking power, if available at a reasonable price.

Discussions to date with Rocky Mountain Power Company have briefly been carried on by generation and transmission cooperatives representing their respective member distribution systems. During the past few months such meetings with Rocky Mountain Power Company have been held in Albuquerque, Denver and Columbus, Nebraska, and have included the Plains G&T Cooperative of New Mexico, Colorado-Ute Electric Association, and the Nebraska Electric Generation and Transmission Cooperative. The latest meeting was held in Columbus, Nebraska, on June 2, 1964.

At this time there appears to be several reasons why REA borrower systems are unable to complete firm arrangements with the Rocky Mountain Power Company for peaking power. For example, Colorado-Ute members have their power supply secured through 1975 by their own generation facilities. Nearly all other interested distribution systems either directly or through their G&T power supplier are also power customers of the U. S. Bureau of Reclamation and because most of these systems are not yet certain of the allocations of Federal power to which they will be entitled within the next few years they have been unable to compute their requirements for peaking power. Furthermore, since most of the REA borrower systems who might use the peaking power are presently served through the transmission

[1140]

system of the U. S. Bureau of Reclamation, the delivery of power economically from the Sweetwater Project will undoubtedly require use of excess capacity in the Federal transmission system. It is our understanding that transmission arrangements have not yet been developed to the point where exact transmission costs can be quoted to our borrower systems. Also consideration must be given to the

[1140]

generation and delivery of base thermal generation to effectively utilize the peaking capacity in our borrower's systems.

The Rocky Mountain Power Company has not requested REA financing in whole or in part as of present date. REA financing would not be precluded for this project, but any facilities constructed therefrom would necessarily be limited to service as contemplated under the Rural Electrification Act. Should use of REA financing in whole or in part enable substantial savings for rural electric consumers proposed to be served by the Sweetwater Project, such financing would necessarily also have to meet all feasibility and security requirements of REA.

In regard to the REA evaluation of the desirability of constructing the Sweetwater Project, this Agency has not made sufficient study of the proposal to furnish such opinion. The project could be quite valuable if it is able to furnish additional capacity, after that provided by the Federal hydroelectric system is no longer obtainable, at a cost which will enable substantial savings over alternatives which would otherwise be required to meet needs of the REA borrower systems.

Sincerely yours,

Administrator

Enclosure

Copy of "Amendment to Application
for License - No. 2289 - Colorado"

[1141]

[1141]

CENTRAL FILES

20426

Project No. 2289-Colorado
Rocky Mountain Power Company

JUN 23 1964

Smith W. Brookhart, Attorney
Brookhart, Becker & Dorsey
1700 K Street, NW.
Washington 6, D.C.

Dear Sir:

This refers to our March 19, 1964 letter to you on Rocky Mountain Power Company's proposed Sweetwater Project No. 2289. It requested that the applicant advise us on the status of and anticipated completion date for negotiation for the sale of power from that project. Information was also requested on the status of negotiations on financing of the construction. The Commission has not received an answer to the March 19 letter.

Enclosed for the applicant's information and comments, is a copy of a letter dated June 10, 1964, from the Administrator, Rural Electrification Administration, relative to the Sweetwater Project.

Very truly yours,

F. Stewart Brown
Chief, Bureau of Power

Enclosure No. 118988

Copy of ltr dtd 6/10/64

PWR	cc: FWRO
Ronka, A.H.:mph	OGC
6/19/64	DLP (2)

JA 53

[1143]

[1143]

October 22, 1964

Mr. F. Stewart Brown, Chief
Bureau of Power
Federal Power Commission
Washington 25, D.C.

*Re: Project No. 2289-Colorado.
Rocky Mountain Power Company.*

Dear Sir:

In keeping with conversations had with staff members concerning the Rocky Mountain Power Project, applicant requests a conference with representatives of the Commission on or after November 9, 1964, to present additional data and discuss the project.

The project has been reoriented and re-engineered in certain particulars, one of the principal changes being that it does not now contemplate taking water out of the White River for transfer to Sweetwater. Engineering data relating to this change will be available for the requested meeting.

There will also be presented information as to the proposals for disposition and transmission of applicant's power, together with plans for financing the construction of the production and transmission facilities.

Representatives of the Rocky Mountain Power Company who wish to attend the conference are Charles F. Brannan, President; Paul G. Van Sickle, Engineer and Director; Harold Lee, Consultant; Robert B. Craig, Vice President and Director; and the writer.

Very truly yours,

Smith W. Brookhart, Attorney

cc: Charles F. Brannan, Esq.
Paul G. Van Sickle
Robert B. Craig

JA 54

[1144]

[1144]

FEDERAL POWER COMMISSION
Washington 25, D.C. 20426

Project No. 2289-Colorado
Rocky Mountain Power Company

OCT 30 1964

Smith W. Brookhart, Attorney
Brookhart, Becker & Dorsey
1700 K Street, N.W.
Washington 6, D.C.

Dear Sir:

This refers to your October 22, 1964 letter on Rocky Mountain Power Company's proposed Sweetwater Project No. 2289, Colorado.

The letter confirms your recent telephone discussion with a member of my staff and requests a conference, on or after November 9, 1964, on matters pertinent to the subject project.

November 9 is satisfactory for the conference which will be held at 10 a.m. in the office of Mr. M. Frank Thomas, Chief, Division of Licensed Projects, Room 2087, GAO Building.

Very truly yours,

F. Stewart Brown
Chief, Bureau of Power

[1145]

[1145]

[Received Nov 16 2 21 PM '64 Federal Power Commission]

ROCKY MOUNTAIN POWER CO.
275 University Blvd. - Denver 6, Colorado
TELEPHONE: 388-4291

November 13, 1964

Federal Power Commission
441 G Street
Washington, D.C.

Attention: M. F. Thomas, Chief
Division of Licensed Projects

In re: Rocky Mountain Power Co.
Project No. 2289 - Colorado

Dear Mr. Thomas:

As agreed at the conclusion of the conference in your office on November 9, 1964, concerning Rocky Mountain Power Co., this letter is for the purpose of advising you of the steps now in process and to be initiated by this applicant in support of its request for the above numbered license.

May I first express our appreciation for your helpful explanations and discussions. The comments and suggestions of your staff were appreciated and will be helpful.

For the last year in particular, the efforts of this applicant have been directed toward negotiating and concluding power sales contracts with several users located within reach of these facilities which are well known to be in need of power in the near future. There can be no serious question but that a market for this power exists. And, we are firmly of the opinion that power can be produced and delivered to such users at attractive and competitive rates.

Furthermore, discussions we have had with responsible financial sources convince me that as soon as tangible evidence is available that firm contracts for the sale of this power will be concluded, the financing of the project is assured.

[1146]

In the course of our discussion with major potential consumers of the power to be developed by the applicant's facilities planned to be constructed at Sweetwater, it has been necessary from time to time to make modification and refinements in the plans and related aspects of this project. This has resulted in the need for changes in some of the documents and exhibits which are now on file with the Commission in support of Application No. 2289. Hence, Exhibits "A" to "O" of the application are now in the process of revision.

As indicated by our discussion and the material before you, it is contemplated that this project will be constructed in three stages.

At the completion of Stage 1, the facility at Sweetwater will generate 165 megawatts. This same facility at Sweetwater will generate an additional 165 megawatts at the completion of Stage 2. Upon the completion of Stage 3 an additional 165 megawatts will be generated at Sweetwater and an additional 210 megawatts at the power house to be located at the South Fork of the White River below Meadows Dam. This latter is in substitution for the proposed facility located at Dotsero.

The amendments above referred to insofar as they pertain to Stages 1 and 2 are minor in nature. It is our plan to have all the material relating to Stages 1 and 2 in your hands on or before November 30, 1964. This material is tendered to the Commission as the basis for the issuance of a license for the construction of Stage 1.

* * *

[1146, 1167]

With further reference to marketing, I believe you will be interested to know that a meeting of the Board of Directors with the Tri-State G. & T. is scheduled to convene on December 1 and 2, 1964, to consider, among other things, our proposal for the sale and purchase of power. Also a meeting is now scheduled with representatives of Colorado Ute and the Salt River Project at Phoenix, Arizona, on November 24, 1964. And, while a specific date has not yet been fixed, we are in the process of arranging meetings with the Power Review Board and representatives of Nebraska co-ops in the immediate future. We will keep you advised of the progress of these and other pertinent negotiations.

Yours truly,
ROCKY MOUNTAIN POWER CO.

Charles F. Brannan
President

CFB/sg

[1167]

November 30, 1964

Federal Power Commission
Washington 25, D.C.

*Re: Project No. 2289 - Colorado.
Rocky Mountain Power Company.*

Gentlemen:

Applicant, by its counsel, submits herewith its amended application (pertaining to Stages 1 and 2) in keeping with the representations made in letter of November 13, 1964, from Rocky Mountain Power Company, by its president, Charles F. Brannan. The material submitted consists of:

- a. The original and six copies of Amendment to Application for License No. 2289 - Colorado, November 30, 1964.

[1167-1168, 1170]

- b. Certificate and Articles of Incorporation (Rocky Mountain Power Company), with all amendments thereto, duly certified by the Secretary of State of Colorado.
- c. Certified true copy of the by-laws of Rocky Mountain Power Company.
- d. One certified and six true copies of Water Decree, Sweetwater and its tributaries, Eagle County, Colorado.
- e. Seven copies of contract between the City of Colorado Springs and Rocky Mountain Power Company, dated October 10, 1963.
- f. Eight copies of the following exhibits:
 - Exhibit J, General Map
 - Exhibit K-1, Sweetwater Powerplant and Forebay
 - Exhibit L-10, Sweetwater Forebay Dam
 - Exhibit L-11, Sweetwater Dam
 - Exhibit L-15, Sweetwater Penstock Details (3 sheets)

[1168]

- f. (continued)

- Exhibit L-19, Sweetwater Powerplant, Floor Plan
- Exhibit L-20, Sweetwater Powerplant General Plan and cross section
- Exhibit L-21, Sweetwater Powerplant, longitudinal section
- Exhibit L-32, Sweetwater Penstock Tunnel and Penstock Pier and Anchor Details.

The amendments which relate to Stage 3 of the project are expected to be filed with you on or before December 31, 1964.

Very truly yours,
Smith W. Brookhart

[1170]

* * *

AMENDMENT TO APPLICATION FOR LICENSE NO. 2289

* * *

JA 59

[1176, 1179]

[1176]

5. *Transmission Lines*

The applicant proposes to furnish only wholesale power at the bus bar and not to distribute retail power. Transmission facilities will be provided by East-West Intertie, Inc., a separate corporation to be licensed separately. Details of the transmission facilities are not covered in this application.

Transmission lines serving the Sweetwater project will include one 230-kilovolt transmission line 46 miles in length which connects Sweetwater with the Oak Creek Power Company's switchyard at Oak Creek, Colorado. From the Oak Creek Power Plant, two 230-kilovolt transmission lines will extend 30 miles to connect with the Colorado-Ute Electric Association's Hayden Steam Plant at Hayden, Colorado. A 500-kilovolt line from Oak Creek Steam Plant, operating at 230-kilovolts, 159 miles in length, will connect the Sweetwater project with the U.S. Bureau of Reclamation's substation near Archer, Wyoming. Under Stage II construction, the line capacity between the Sweetwater project and the Oak Creek project will be increased by the addition of a second 230-kilovolt line. The line between Oak Creek and the Archer substation will be stepped up to 500-kilovolts and this single 500-kilovolt line will extend eastward to Columbus, Nebraska.

[1179]

* * *

- (i) The proposed markets for the power to be developed by Stages I and II of the project are public agencies in Colorado, New Mexico, Arizona and Nebraska. Discussions with public agencies in these states have been most encouraging and indicate early completion of sales agreements.

The Department of the Interior has agreed to make available spare capacity of the Federal power system for wheeling Sweetwater power.

[1248, 1271]

[1248]

EXHIBIT O

*STATEMENT OF TIME DESIRED
FOR CONSTRUCTION OF PROJECT*

It is desired to begin construction of Stages I and II of the Sweetwater Project in the Spring of 1965 and it is then estimated that work on Stage I will be substantially completed by the Fall of 1968.

* * *

[1271]

December 31, 1964

Federal Power Commission
441 G Street, N.W.
Washington, D.C.

*Re: Project 2289 - Colorado.
Rocky Mountain Power Company.*

Gentlemen:

Applicant, by its counsel, submits herewith its amended application (pertaining to Stage III), in keeping with the representations made in letter of November 13, 1964, from Rocky Mountain Power Company, by its President, Charles F. Brannan.

The material submitted herewith consists of:

- a. The original and six (6) copies of Amendment to Application for License No. 2289 - Colorado, December 31, 1964 (Stage III).
- b. The original and seven (7) copies of the following exhibits:

Exhibit J - General Map

Exhibit K-2 - Meadows Reservoir.

Exhibit K-3 - Tunnels, Syphon and Conduit.

[1271-1273, 1283]

Exhibit K-4 - Lost Solar Forebay and Power Plant and
South Bay Reservoir.

Exhibit L-10-A - Sweetwater Forebay Dam.

Exhibit L-41 - Meadows Dam.

Exhibit L-42 - Lost Solar Forebay Dam.

Exhibit L-43 - South Fork Dam.

Exhibit L-44 - Lost Solar Penstock Tunnels & Meadows
Tunnels.

Exhibit L-45 - Lost Solar Powerplant.

Exhibit L-46 - Lost Solar Powerplant - Long. Section.

Exhibit L-47 - Lost Solar Powerplant - Floor Plan.

Exhibit L-48 - Plateau, Cross Creek and Sweetwater
Forebay Tunnels.

[1272]

b. (Continued)

Exhibit L-49 - Typical Conduit.

Exhibit L-50 - Typical Diversion Dam and Pipe.

Very truly yours,

Smith W. Brookhart

Attorney for Applicant

Enclosures

cc: Charles F. Brannan, Esq.

Mr. Paul G. Van Sickle

[1273]

* * *

AMENDMENT TO APPLICATION FOR LICENSE NO. 2289

* * *

[1283]

* * *

-9-

4) *Powerplants*

Stage III at the Sweetwater Powerplant comprises the
installation of the third pair of machines. As in the
first two stages, there will be Francis reversible pump-

[1283-1285]

turbines and generator-motors, which will bring the capacity of this powerplant, as presently planned, to 495,000 kilowatts. At the Sweetwater Forebay a low-head pumping plant, consisting of two 8400 horsepower horizontal shaft units, will be constructed for pumping back to Meadows.

The installation at Lost Solar Powerplant will be four units, similar to the machines in the Sweetwater plant, with provision

[1284]

-10-

for a further pair of machines. The initial installed capacity, therefore, will be 330 megawatts with provision for increasing this to 495 megawatts. As at Sweetwater, the underground construction of the Lost Solar Powerhouse provides the deep submergence required for efficient operation of the machines as pumps, and, at the same time, insures minimum interference with the beauty of the surroundings and the nearby primitive area.

* * *

5) *Transmission Lines*

The applicant proposes to furnish only wholesale power at the bus bar and not to distribute retail power. High-voltage transmission facilities will be provided in Stage III, as in Stages I and II, by East-West Intertie, Inc., a separate corporation to be licensed separately.

[1285]

-11-

In order to assist in an appreciation of the interconnection of Sweetwater with the other entities of the power pool, a brief description of the transmission facilities to be constructed in conjunction with Stages I and II was outlined in the Amendment of November 30, 1964. With the development of Sweetwater

[1285, 1314-1315]

Stage III as presently applied for, a second 500-kilovolt line will be installed from the Oak Creek Steam Plant, Colorado, to Archer, Wyoming, and from there progressively to North Platte and Columbus, Nebraska. In addition, a third 230-kilovolt line will be added between Sweetwater and Oak Creek.

* * *

[1314]

Exhibit 1-Page 3 of 4

* * *

It is conceivable and very probable that other large thermal electric power plants connected into the pool will wish to avail themselves of the benefits of the Sweetwater-Lost Solar pumped-storage facilities. In that event, the daily peaks of the combined system will become relatively more pronounced and peaky and the demand can be met by the installation of additional units respectively in Lost Solar and Sweetwater with their associated penstock lines. As currently planned and designed, the limit in peaking capability is roughly 3,500,000 kilowatt hours and

[1315]

4,000,000 kilowatt hours per day from Sweetwater and Lost Solar respectively, without using Meadows storage, and if Meadows storage is brought in with replacement over weekends, about 5,000,000 kilowatt hours each, or a total of some 10,000,000 kilowatt hours per day. This indicates the extent of the peaking capability of the hydraulic system as a whole and suggests that in a 5-hour daily discharge cycle the system could be expanded to provide over 2,000,000 kilowatts of peaking capacity.

* * *

ESTIMATE OF COST
SWEETWATER PUMPED STORAGE PROJECT

Exhibit N-Page 2 of 11

ESTIMATED TOTAL COST SUMMARY

1341

- BY STAGES -

YEAR	MW. 1/	STAGE		CUMULATIVE	
		FIRST	SECOND	THIRD	MW. 1/ COST
Sweetwater ^{2/}	1968 165	\$31,424,000	--	--	165 \$ 31,424,000
	1970 165	--	\$13,769,000	--	330 45,193,000
	1972 165	--	--	\$14,405,000	495 59,598,000
<u>S u b t o t a l . .</u>		495 \$31,424,000	\$13,769,000	\$14,405,000	
Lost Solar ^{3/}	1974 165	--	--	\$22,684,000 ^{4/}	660 82,282,000
	1974 -	--	--	29,765,000 ^{5/}	660 112,047,000
	1976 165	--	--	16,050,000	825 128,097,000
<u>S u b t o t a l . .</u>		--	--	\$68,499,000	
<u>ESTIMATED TOTALS. . .</u>		825 \$31,424,000	\$13,769,000	\$82,904,000	825 \$128,097,000

^{1/} Installed capacity.

^{2/} Pumped storage.

^{3/} Conventional and pumped storage.

^{4/} Directly chargeable. See "A-2," Page 5, this exhibit.

^{5/} Pro-rated charge. See "B," Page 6, this exhibit.

[1341]

[1355]

[1355]

FEDERAL POWER COMMISSION

Washington, D. C. 20426

Project No. 2289-Colorado
Rocky Mountain Power Company

May 11, 1965

Smith W. Brookhart, Esquire,
Brookhart, Becker & Dorsey
1700 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Brookhart:

This is in reference to the Rocky Mountain Power Company's amended applications for license filed November 30 and December 31, 1964, for Project No. 2289, to be located on the South Fork of White River, Sweetwater Creek and other headwater tributaries in the Upper Colorado River Basin in Garfield, Eagle and Rio Blanco Counties, Colorado.

The above applications are incomplete as they do not meet the requirements of Section 4.41 of the Commission's Regulations Under the Federal Power Act which provides in part, for the filing of an Exhibit G to the application "showing the financial ability of applicant to carry out the project applied for, with a statement or explanation of the proposed method of financing the constructions thereof". You have also been advised that the showing you have made, pursuant to Section 4.40(i) of the Regulations, of a demand for the power upon completion of the project is deemed to be inadequate.

You have been requested in the past to furnish such information as stated above, but a satisfactory reply has not been received. Your failure to submit a satisfactory reply within 30 days from the date of this letter will constitute grounds for rejection of the application under Section 4.31 of the Regulations.

By direction of the Commission.

/s/ J. H. Guttridge
Secretary.

JA 66

[1365]

[1365]

[Received Jun 3 9 41 AM '65 Federal Power Commission]

STATE OF COLORADO

JOHN A. LOVE, Governor

THE PUBLIC UTILITIES COMMISSION

STATE SERVICES BUILDING
1525 SHERMAN STREET
DENVER, COLORADO 80203

June 1, 1965

Mr. Joseph H. Gutride
Secretary
Federal Power Commission
Washington, D. C.

Re: Project No. 2289, Amended
Rocky Mountain Power Company

Dear Mr. Gutride:

Thank you for the notice of the amended application in Project No. 2289.

Since this Commission intervened in the Project as originally filed, please consider this letter as notice of our continued intervention in Project No. 2289, as amended.

Correspondence or communications in regard to this intervention should be addressed as follows:

Henry E. Zarlengo, Chairman
The Public Utilities Commission
of the State of Colorado
506 State Services Building
1525 Sherman Street
Denver 3, Colorado

With copies as follows:

JA 67

[1365-1367]

Robert P. Fullerton, Assistant Attorney
General
The Public Utilities Commission
of the State of Colorado
506 State Services Building
1525 Sherman Street
Denver 3, Colorado

[1366]

Very truly yours,

THE PUBLIC UTILITIES COM-
MISSION OF THE STATE OF
COLORADO

By: /s/ J. M. McNulty
J. M. McNulty
Chief Engineer

JMM/mm

[1367]

CERTIFICATE OF SERVICE

I hereby certify that the foregoing documents were served
upon the following party, by mailing a copy thereof pro-
perly addressed to:

Richard C. Harris, Vice President
Rocky Mountain Power Company
275 University Boulevard
Denver, Colorado, 80206

/s/ Robert P. Fullerton
Robert P. Fullerton

Dated this 15th day of June, 1965.

[1507]

*BEFORE THE FEDERAL POWER COMMISSION
PROTEST
OF APPLICATION OF ROCKY MOUNTAIN
POWER COMPANY*

AMENDED PROJECT No. 2289

The Colorado River Water Conservation District hereby protests the granting of any license to Rocky Mountain Power Company to authorize the construction, operation and maintenance of any of the projects outlined and described in its original application and amendments thereto and as reason therefor states:

1. That The Colorado River Water Conservation District is a quasi-municipal corporation created by special statute of the State of Colorado, and covers the subject areas involved in the application of said Rocky Mountain Power Company.

2. That many of the claims for water rights of Rocky Mountain Power Co., upon which the entire feasibility of its project rests, are in serious dispute for the following reasons:

(a) Water rights in the State of Colorado are based on its Constitution, and statutes passed in aid thereof, which provides that all waters are the property of the people of the State of Colorado and are subject to appropriation by diversion and beneficial application thereof. In water adjudication proceedings

[1508]

senior decrees are granted to those who first, in point of time, commence work to divert and beneficially apply the waters.

(b) In Water District No. 53 of the State of Colorado the subject company has had conditional decrees granted

[1508-1509]

to certain waters but has done little to diligently apply these waters to a beneficial use. Such decrees can be lost for failure to make a diligent application thereof.

(c) All water claims filed by said company in Water District No. 43 of the State of Colorado are in direct conflict with claims therein filed by this protestant for development of its Flattops Project, a plan proposed by the Bureau of Reclamation. This dispute and controversy is still in litigation and possibly will not be finally settled for several years. In this respect the reservoir sites of protestant and said company are nearly identical, the sources of supply the same, but the dates of initiation of appropriation of protestant are approximately three years prior to those of said company.

3. Certain properties claimed as being owned by said company in its original application have reportedly been lost due to its failure to maintain payments on contracts of purchase therefor.

4. The proposed Lost Solar Reservoir site of said

[1509]

company is located in a designated Wilderness area in the White River National Forest.

5. The original application filed herein alleged that the proposed market of power produced would be to the Public Service Company of Colorado at a cost in excess of what said company now proposes to sell said power in the states of Kansas and Nebraska.

6. That no statements of claim have been filed in said Water District No. 43 relating to any of the proposed features of the project lying within the boundaries of said District.

7. That the entire project, as now proposed, is financially unfeasible and highly speculative; that such a project would allow the preemption of the natural resources of the State

of Colorado by mere "paper filings" with no reasonable expectation of fulfillment.

/s/ Philip P. Smith
Philip P. Smith - Secretary-Engineer
Colorado River Water Conservation
District

* * *

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of)
)
 Rocky Mountain Power Co.) Project No. 2289

*PETITION TO INTERVENE
OF
PUBLIC SERVICE COMPANY OF COLORADO*

COMES NOW Public Service Company of Colorado, a Colorado corporation (Petitioner) with its principal place of business at 550 15th Street, Denver, Colorado, and files this petition for leave to intervene in the above proceedings pursuant to the provisions of the Federal Power Act, as amended, and the Commission's Rules of Practice and Procedure in such cases made and provided; and in support thereof respectfully states:

1. Petitioner is an operating public utility engaged, inter alia, in the generation, purchase, transmission, distribution and sale of electricity within the State of Colorado. Petitioner is the largest supplier of electricity in the State of Colorado. Its electric system covers a major portion of

the State, extending from the Grand Junction area in western Colorado and the Alamosa area in Southern Colorado.

[1541-1542]

to the Sterling area in northeastern Colorado. Its service area has an estimated population of 1,278,000, of which approximately 1,100,000 are in the Denver metropolitan area.

2. Communications concerning this petition should be addressed to:

L. R. Patterson, Vice President
Public Service Company of Colorado
550 15th Street
Denver, Colorado 80202

with copies to Petitioner's attorneys:

Lee, Bryans, Kelly & Stansfield
550 15th Street
Denver, Colorado 80202
(Attention: E. A. Stansfield, Esq.)

3. Petitioner owns and operates, all within the State of Colorado, electric generating facilities having a total name plate rating as of December 31, 1964 of 1,110,460 kw. Petitioner has under construction and planned an additional one million kilowatts of capacity in its service area consisting of (a) its Cabin Creek Pump Storage Hydroelectric Project being constructed pursuant to a license issued by this Commission on March 23, 1964 which, when completed, will

[1542]

have a maximum generating capacity of 324,000 kw; (b) its No. 4 generating unit to the Cherokee Station located at the north edge of the City of Denver has been authorized and is being designed and will have a name plate generating capacity of 350,000 kw; and (c) nuclear power station with a guaranteed net capacity of 330,000 kw which is in the final stages of contract negotiation by and between Petitioner, the contractor and the Atomic Energy Commission of the United States.

4. Petitioner has under careful analysis and continued study, the future power requirements of the territory it

[1542-1543]

serves in Colorado and is of the opinion Petitioner's existing and planned generating capacity, plus that of other existing and proposed for the general market area proposed to be served by Rocky Mountain Power Co. will provide adequately for all present and realistically projected future power requirements of such area.

5. Due to the vagueness of the proposed market for the disposition and sale of electric energy to be generated by the hydroelectric project proposed by Rocky Mountain Power Co. in its license application, Petitioner's traditional market for its power present and planned may be jeopardized,

[1543]

and the proposed project of Rocky Mountain Power Co. and its related companies may result in an unnecessary duplication of generating and transmission facilities in the historical Colorado market area served and to be served by Petitioner.

6. Petitioner herein is vitally interested in the market in Colorado which Rocky Mountain Power Co. may propose to serve, and such market may be the market in part or otherwise your Petitioner has traditionally served. For this reason Petitioner alleges it has an interest in these proceedings which may be directly affected, that its intervention and participation in these proceedings will be in the public interest, and its interest in such proceedings may not be represented adequately by any other party thereto.

WHEREFORE, Petitioner herein respectfully prays that under the provisions of the Federal Power Act, as amended, and the rules and regulations issued thereunder, it be granted leave to intervene in the above captioned proceeding with the right to have notice of and appear at all hearings, to offer testimony, to produce and cross-examine witnesses, and otherwise to participate fully therein.

1. The first part of the document is a title page. It contains the title "THE HISTORY OF THE UNITED STATES OF AMERICA" and the author "BY JAMES MADISON".

1

Dated at Denver, Colorado this 8th day of June, 1965.

**PUBLIC SERVICE COMPANY
OF COLORADO**

By LEE, BRYANS, KELLY &
STANSFIELD

By E. A. Stansfield
550 15th Street
Denver, Colorado 80202
Its attorneys

STATE OF COLORADO

)

SS

CITY & COUNTY OF DENVER

)

I, E. A. Stansfield, of counsel for Public Service Company of Colorado, hereby depose and swear that the facts set forth in the foregoing are true and correct to the best of my knowledge, information and belief.

E. A. Stansfield

Subscribed and sworn to before me this 8th day of June,
1965.

My commission expires November 7, 1965.

Notary Public

(Seal)

[1547-1548]

3. That all or a portion of the lines and facilities proposed to be constructed or which will be constructed if license is granted by this Commission will or may physically and economically duplicate the lines, plants and systems of Petitioner lawfully constructed and dedicated to public use by Petitioner.

4. That Petitioner is now maintaining and for many years passed has maintained electrical generating facilities, together with related transmissions systems and distribution lines and related facilities sufficient and adequate to meet all present and foreseeable needs of its customers and residents in its service areas in the States of Utah, Idaho and Wyoming on both a retail and wholesale basis and has held itself out as ready, willing and able to supply the retail and wholesale future needs of all its

[1548]

customers and potential customers located in and around the areas in which its facilities are located, including areas which will be or may be proposed to be served as set forth in applicant's application for license, and Petitioner is ready, willing and able to supply all of the present and additional requirements of the consumers located in the States of Utah, Idaho and Wyoming proposed to be supplied through applicant's application.

5. That all or a portion of applicant's proposed lines and facilities that may be constructed if this application for license is granted will or may be operated in open and destructive competition with the lawful and regulated business of Petitioner, Utah Power & Light Company, and such competitive operation of said lines and facilities by applicant will result in substantial loss of present and future revenues to Petitioner, to its substantial damage and to the continuing damage and detriment of its electrical consumers located throughout extensive portions of the States of Utah, Idaho and Wyoming.

[1549]

6. That there is no present or immediate future need by applicant or by the public generally or by the United States for the license sought under this application insofar as the States of Utah, Idaho and Wyoming are concerned and generally the intermountain area of the United States.

WHEREFORE, Utah Power & Light Company respectfully requests an order issue by this Commission authorizing intervention by Petitioner, Utah Power & Light Company, as its interests may appear.

Dated this 8th day of June, 1965.

UTAH POWER & LIGHT COMPANY

By /s/ F. Gerald Irvine
Vice President

/s/ Sidney G. Baucom
Sidney G. Baucom
Attorney for Petitioner
Utah Power & Light Company
1407 West North Temple Street
Salt Lake City, Utah

STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

F. GERALD IRVINE, being first duly sworn on oath, deposes and says that he is a Vice President of Utah Power & Light Company, Petitioner; that he has read the foregoing Petition to Intervene of Utah Power & Light Company and knows the contents thereof; that the same are true to

up to 4 copies after

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cense is granted by this Commission will or may physically and economically duplicate the lines, plants and systems of Petitioner lawfully constructed and dedicated to public use by Petitioner.

4. That Petitioner is now maintaining and for many years passed has maintained electrical generating facilities, together with related transmission systems and distributions lines and related facilities sufficient and adequate to meet all present and foreseeable needs of its customers and residents in its service areas in the State of Colorado on both a retail and wholesale basis and has held itself out as ready, willing and able to supply the retail and wholesale future needs of all its customers and potential customers located in and around the areas in which its

[1555]

facilities are located, including areas which will be or may be proposed to be served as set forth in applicant's application for license, and Petitioner is ready, willing and able to supply all of the present and additional requirements of the consumers located in the State of Colorado proposed to be supplied through applicant's application.

5. That all or a portion of applicant's proposed lines and facilities that may be constructed if this application for license is granted will or may be operated in open and destructive competition with the lawful and regulated business of Petitioner, The Western Colorado Power Company, and such competitive operation of said lines and facilities by applicant will result in substantial loss of present and future revenues to Petitioner, to its substantial damage and to the continuing damage and detriment of its electrical consumers located throughout extensive portions of the State of Colorado.

6. That there is no present or immediate future need by applicant or by the public generally

[1556-1557]

[1556]

or by the United States for the license sought under this application insofar as the State of Colorado is concerned.

WHEREFORE, The Western Colorado Power Company respectfully requests an order issue by this Commission authorizing intervention by Petitioner, The Western Colorado Power Company, as its interest may appear.

Dated this 8th day of June, 1965.

THE WESTERN COLORADO
POWER COMPANY

By /s/ F. Gerald Irvine
Vice President

/s/ Sidney G. Baucom
Sidney G. Baucom
Attorney for Petitioner
The Western Colorado Power Company
1407 West North Temple Street
Salt Lake City, Utah

STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

F. GERALD IRVINE, being first duly sworn on oath, deposes and says that he is a Vice President of The Western Colorado Power Company, Petitioner; that he has read the foregoing Petition to Intervene of The Western Colorado Power Company and knows the contents

[1557]

the best of his knowledge and belief.

F. Gerald Irvine

Subscribed and sworn to before me this 8th day of June, 1965.

My Commission Expires /s/ Sidney G. Baucom
July 12, 1968. Notary Public

[1614]

[1614]

Law Offices
BROOKHART, BECKER & DORSEY
1700 K Street, N.W.
Washington, D.C. 20006

June 10, 1965

Federal Power Commission
Washington 25, D. C.

*Re: Project No. 2289 - Colorado
Rocky Mountain Power Company*

Gentlemen:

In response to the Commission's letter of May 11, 1965, applicant submits the following information and request for time within which to fulfill the requirements of Section 4.40(i) of the Regulations of the Commission.

Applicant is now, and has been diligently working to complete the application in every respect. Since the conference between representatives of the applicant and staff members of the Commission in November 1964 and continuing after filing the amendment of December 31, 1964, much work and effort has gone into the completion of all of the engineering and planning phases of the project. Applicant has expended more than \$200,000 since the November conference with Commission's staff. Also, much effort has been devoted to negotiating for contracts with responsible users. At this moment applicant expects these efforts to be successful.

Negotiations with representatives of Colorado Ute and the Salt River Project at Phoenix, Arizona, referred to in the letter from Charles F. Brannan, President of Applicant, to the Commission, November 13, 1964, are still being actively carried on to agree upon a power user contract.

Negotiations by applicant's officials with the Nebraska

[1614-1615]

Power Review Board and representatives of major Nebraska Public Power Districts have reached the point where final decision as to a power user's contract is awaiting the adoption of facilitating state legislation.

[1615]

A brochure describing the applicant's project and its several integral parts, some of the facilities which will also be formally brought before the Commission, has been given wide distribution by applicant to potential users of the power situated within sound economical reach of applicant's facilities. A copy of the brochure is submitted herewith. Applicant can and will corroborate these representations of "active and genuine" interest of responsible users upon request.

On the basis of the representations made, it is requested that applicant be granted nine months within which to furnish a contract or contracts that will fully establish the financial ability of applicant to carry out the project.

We respectfully submit that it is in the public interest to grant applicant's request for additional time and that no harm or prejudice to the public or any private persons or entity will result from granting the requested extension of time. To dismiss this application at this time would result in great loss to the applicant.

It is noted that the Commission's Notice of Amended Application for License for Proposed Project dated May 11, 1965, sets June 10, 1965, as the last day for filing protests or petitions concerning the application as amended December 31, 1964.

Very truly yours,

Smith W. Brookhart
Attorney for Applicant

[1617]

[1617]

THE MOUNTAIN-MIDWEST POWER POOL

* * *

Its new hydroelectric pumped-storage structures on tributaries of the Colorado River, when fully installed, will supply 2,000,000 kilowatts of peaking power. This ever ready power supply, instantly available for periods of high demand, will be integrated with the power to be produced by a new, large, electric generating steam plant, situated upon and utilizing the abundant coal deposits of northwestern Colorado and capable of generating an additional 1,800,000 kilowatts of firm power to be available at all times.

[1652-1653]

[1652]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

PETITION FOR LEAVE TO INTERVENE
ON BEHALF OF
HUMBLE OIL & REFINING COMPANY

Comes now Humble Oil & Refining Company (Humble) and files this petition for leave to intervene in the proceeding at Project No. 2289. As grounds in support whereof, Humble shows as follows:

I

This petition is filed pursuant to the provisions of the Federal Power Act, including particularly Section 308(a) [49 Stat. 858 (1935); 16 U.S.C. 825g], and the provisions of the Commission's Rules of Practice and Procedure, including particularly Section 1.8 (18 C.F.R. 1.8).

II

Humble is a corporation organized and existing under the laws of the State of Delaware. Its principal office is located in the Humble Building, Houston, Texas. Humble is authorized to do business in all of the States of the United States of America and in the District of Columbia.

[1653]

III

The names, titles, and post office addresses of persons to whom communications with regard to this petition should be addressed are:

Raymond D. Sloan
Manager, Shale Oil Project
Humble Oil & Refining Company
Post Office Box 2180
Houston, Texas 77001

Bernard A. Foster, Jr.
Ross, Marsh & Foster
725 - 15th Street, N.W.
Washington, D.C. 20005

IV

As set forth below, Humble has certain rights and interests which may be adversely affected by the project of Rocky Mountain Power Company (Rocky Mountain), proposed by its pending application, as amended, at Project No. 2289, as described in the "Notice of Amended Application for License for Proposed Project," issued May 11, 1965, and published in the Federal Register on May 18, 1965 (30 F.R. 6743).

Pure water is indispensable to development by Humble of its oil shale interests in the Piceance Basin, Rio Blanco County, Colorado, in the White River drainage area. The most feasible and economical source for satisfying this requisite is the South Fork of the White River where water has not been contaminated with return flow from irrigation. Accordingly, in the orderly implementation of its long-range plans for its

[1654]

Shale Oil Project, Humble has acquired option rights from Winston Wheeler, L. E. Phillips, Jr., and Fourteen Mile Land Company, in the proposed Stillwater Reservoir, the proposed Stillwater Power Plant, and the proposed South Fork-Piceance Pipeline, adjudicated as Priorities 575 and 577; 576; and 578, respectively.¹ The decree in that action grants the right to impound 12,500 acre feet of water per year for industrial and other uses in the Stillwater Reservoir, to appropriate 300 cubic feet of water per second for use in generating power in the Stillwater Power Plant, and to divert and appropriate 70 cubic feet of water per second from the South Fork of the White River for industrial and other beneficial purposes, all at a

[1654-1655]

location on the South Fork of the White River, some six (6) miles upstream from its confluence with the North Fork.

In addition, Humble has acquired rights claimed by Fourteen Mile Land Company to impound 40,000 acre feet of water annually in the proposed South Fork Reservoir for the proposed South Fork Pipe Line at a location on the South Fork of the White River below the mouth of Lost Solar Creek. These claims are pending in the water adjudication proceeding presently being

¹ "In the Matter of the Adjudication of Priority Rights to the Use of Water for Irrigation and Other Beneficial Purposes in Water District No. 43 in the State of Colorado," Civil Action No. 999, In the District Court in and for the County of Rio Blanco and State of Colorado.

[1655]

adjudicated in Water District No. 43 in District Court in Rio Blanco County, Colorado.²

In the same adjudication, Rocky Mountain has pending its amended claim for its proposed Meadows Reservoir in the South Fork of the White River, approximately nine (9) miles upstream from the site of South Fork Reservoir, together with its claim for its proposed Lost Solar Forebay Reservoir on Lost Solar Creek, and its proposed South Fork Afterbay Reservoir on the South Fork of the White River below the mouth of Lost Solar Creek. Rocky Mountain claims the right to impound 132,500 acre feet of water annually for industrial and other uses in the Meadows Reservoir and 6,367 acre feet of water annually in the South Fork Afterbay Reservoir.³

The aforementioned rights optioned to Humble are senior to the aforementioned rights claimed by Rocky Mountain.

Furthermore, Fourteen Mile Land Company claims an initial survey date for the South Fork Reservoir of Septem-

ber 14, 1964. Rocky Mountain claims an initial survey date for the South Fork Afterbay Reservoir of November 9, 1964. Fourteen Mile Land Company's claim is pending in the water adjudication proceeding presently being adjudicated in Water District No. 43.⁴ Rocky

² "In the Matter of the Supplemental Adjudication of the Priority of the Appropriation of Water for all Beneficial Purposes in Water District No. 43, Water Division No. 6, in the State of Colorado, Yellow Jacket Water Conservancy District," Civil Action No. 1269, In the District Court in and for the County of Rio Blanco and the State of Colorado.

³*Ibid.*

⁴*Ibid.*

[1656]

Mountain has not filed its claim in that proceeding, and that proceeding was closed to filing of further claims in December, 1964.

V

As the Government has repeatedly recognized, the present and future public interest will be served by coordinated governmental and private actions directed toward effective and efficient development of oil from shale as an abundant natural resource. Humble also recognizes that any license issued for a project under the Federal Power Act must be on condition:⁵

"That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes; and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval."

[1656-1657]

In these circumstances, questions arise as to whether a license can properly issue in this proceeding for the proposed project. Moreover, Humble submits that, if a license were to issue in any form, the public interest requires that it be one which will be compatible with, and will recognize and preserve, the aforementioned rights acquired for the purpose of effective and efficient development of oil from shale.

⁵41 Stat. 1068 (1920), as amended; 16 U.S.C. 803(a).

[1657]

VI

Although the nature and extent of the impact of Rocky Mountain's project on the aforementioned rights of Humble cannot be measured precisely from the description of that project in the notice of May 11, 1965, Humble asserts that it clearly has interests which may be directly affected in this proceeding, which are without representation by any other party, and as to which Humble may be bound by the Commission's action. Humble further asserts that its participation in this proceeding will be in the public interest within the meaning of Section 308(a) of the Federal Power Act.⁶

VII

WHEREFORE, Humble prays that the Commission issue an order granting it leave to intervene and admitting it as a party in this proceeding, including but not limited to the right to have notice and appear at all hearings, to file pleadings, to produce evidence and witnesses, to examine and cross-examine witnesses, to be heard by counsel and other representatives, to submit briefs, to

⁶49 Stat. 858 (1935); 16 U.S.C. 825g.

[1658]

[1658]

make oral argument if oral argument be had, and to do any and all things which any other party may properly do.

Respectfully submitted,
HUMBLE OIL & REFINING
COMPANY

By /s/ Bernard A. Foster, Jr.
Bernard A. Foster, Jr.
Ross, Marsh & Foster
725 - 15th Street, N.W.
Washington, D.C. 20005
Its Attorneys

Carl Illig
Associate General Counsel
Humble Oil & Refining Company
Post Office Box 2180
Houston, Texas 77001

John P. Knodell, Jr.
Humble Oil & Refining Company
Post Office Box 120
Denver, Colorado 80201

OF COUNSEL

Dated at Washington, D.C.
this 10th day of June, 1965.

[1696-1697]

[1696]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of)
) Project No. 2289
Rocky Mountain Power Co.)

*APPLICANT'S ANSWER
to
PETITION TO INTERVENE
of
HUMBLE OIL & REFINING COMPANY*

Applicant, above named, for answer to the Petition of the Humble Oil & Refining Company to Intervene, states and shows to the Commission as follows:

1. Applicant admits the allegations of Paragraphs 1 and 2 of the Petition.
2. Applicant denies such allegations of fact as are contained in Paragraphs 4, 5 and 6. Applicant specifically denies that its proposed use of water for the generation of electric power will in anywise degrade the quality of the water or will appreciably diminish the supply of waters which may be needed for the development of oil shale in the Piceance Basin, Rio Blanco County, Colorado, or elsewhere.
3. Applicant alleges that the proceedings, to determine the nature and ownership of water and water rights referred to in Petitioner's Paragraphs 4 and 6 are now pending before the

Exhibit "B"

[1697]

appropriate Courts of the State of Colorado having lawful

jurisdiction of such matters and cannot be considered or determined by this Commission.

4. Applicant alleges that the waters of the White River to which this Petition repeatedly refers are not required for the operation of the facility for which license is sought in this Petition. The facility for which license is sought in this Petition is located on the Sweetwater Creek which drains a wholly separate and independent water shed from that of the White River.

5. Applicant further states that this Petition does not state facts from which this Commission may properly conclude that the intervention of the Humble Oil & Refining Company is in the public interest or that this Petitioner is entitled to participate in these proceedings in any other capacity or for any proper purpose whatsoever.

6. Applicant alleges that this Petition does not set out clearly and concisely the facts from which the nature of Petitioner's alleged right or interest can be determined or the grounds of the proposed intervention and does not adequately advise the parties or the Commission of the facts which it intends to controvert or the questions of law it intends to put at issue.

[1698]

[1698]

WHEREFORE, Applicant respectfully prays that the Petition of Humble Oil & Refining Company for Intervention be denied.

Respectfully submitted,
ROCKY MOUNTAIN POWER
COMPANY

By /s/ Smith W. Brookhart
Smith W. Brookhart
Brookhart, Becker & Dorsey
1700 K Street, N.W.
Washington, D.C. 20006
Its Attorneys

Dated at Washington, D.C.
this 21st day of June, 1965.

CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, a copy of the within Answer to Petition to Intervene of Humble Oil & Refining Company, by depositing the same in the United States mail on the 21st day of June, 1965, to: Mr. Raymond D. Sloan, Manager, Shale Oil Project, Humble Oil & Refining Company, Post Office Box 2180, Houston, Texas 77001; Bernard A. Foster, Jr., Esq., Ross, Marsh & Foster, 725 - 15th Street, N. W., Washington, D. C. 20005; Carl Illig, Esq., Associate General Counsel, Humble Oil & Refining Company, Post Office Box 2180, Houston, Texas 77001; and Mr. John P. Knodell, Jr., Humble Oil & Refining Company, Post Office Box 120, Denver, Colorado 80201.

/s/ Smith W. Brookhart
Smith W. Brookhart

[1699]

In the Matter of)
)
 Rocky Mountain Power Co.) Project No. 2289

[1700]

[1700-1701]

completion of the project." Hence, the power which is proposed to be produced by the Sweetwater Project for which this Applicant now seeks license will only supplement the supply of electric energy at a far more economical cost with resulting benefits to the consumers and the public generally. Therefore, Applicant denies the allegations of Paragraphs 3, 4, 5 and 6, and requests that Petitioner be put upon strict proof thereof.

3. Applicant states that this Petition does not state facts from which this Commission may properly conclude that the intervention of the Public Service Company of Colorado is in the public interest or that said Petitioner is entitled to participate in these proceedings in any other capacity or for any proper purpose whatsoever.

4. The substance of the unsupported conclusions contained in this Petition for Intervention is that the Petitioner has a virtual monopoly over the generation and supply of power in the State of Colorado and contemplates extending said monopoly throughout the balance of the State of Colorado; and, hence, the authorization of any facility which might serve any area within the State of Colorado or any of its neighboring States or any other areas

[1701]

in the United States at reasonable rates will "jeopardize" its control of its "traditional market". Applicant specifically denies that Petitioner has any rights to "a traditional market" for which it is presently generating power or for which Petitioner plans to generate power in the future which may be jeopardized by the licensing of the project now before this Commission. Applicant further denies that the Commission has any duty or responsibility to protect the market of this Petitioner. Petitioner further states that the facilities for which it seeks a license can and will supply markets now in need of such power at reasonable prices and will thereby contribute to the sound and accelerated growth and development of said areas.

5. Applicant alleges that the Petition does not set out clearly and concisely the facts from which the nature of Petitioner's alleged right or interest can be determined or the grounds of the proposed intervention and does not adequately advise the parties or the Commission of the facts which it intends to controvert or the questions of law it intends to put at issue.

WHEREFORE, Applicant respectfully prays that the

[1702]

Petition of the Public Service Company of Colorado for Intervention be denied.

Respectfully submitted,

ROCKY MOUNTAIN POWER
COMPANY

By /s/ Smith W. Brookhart
Smith W. Brookhart
Brookhart, Becker & Dorsey
1700 K Street, N.W.
Washington, D.C. 20006
Its Attorneys

Dated at Washington, D.C.
this 21st day of June, 1965.

CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, a copy of the within Answer to Petition to Intervene of Public Service Company of Colorado, by depositing the same in the United States mail on the 21st day of June, 1965, to: Mr. L. R. Patterson, Vice President, Public Service Company of Colorado, 550 - 15th Street, Denver, Colorado 80202; and Lee, Bryans, Kelly & Stansfield, 550 - 15th Street, N.W., Denver, Colorado 80202 (Attention: B. A. Stansfield, Esquire).

/s/ Smith W. Brookhart
Smith W. Brookhart

[1703]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of)
) Project No. 2289
Rocky Mountain Power Co.)

APPLICANT'S ANSWER
to
PETITION TO INTERVENE
of
THE WESTERN COLORADO POWER COMPANY

Applicant, above named, for answer to the Petition of The Western Colorado Power Company to Intervene, states and shows to the Commission as follows:

1. Applicant admits the allegations of Paragraph 1 and 2 of the Petition.
2. Applicant denies the allegations of Paragraphs 3, 4, 5 and 6 of the Petition. Applicant further denies that the facilities proposed to be constructed will or may physically or economically duplicate the lines, plant or system of Petitioner or that the construction of the facilities proposed by this Applicant will be detrimental to any of the electric consumers within the State of Colorado.
3. Applicant further states that this Petition does not state facts from which this Commission may properly conclude that the intervention of The Western Colorado Power Company is

[1704]

in the public interest or that this Petitioner is entitled to participate in these proceedings in any other capacity or for any proper purpose whatsoever.

4. Applicant alleges that this Petition does not set out clearly and concisely the facts from which the nature of Petitioner's alleged right or interest can be determined or the grounds of the proposed intervention and does not adequately advise the parties or the Commission of the facts which it intends to controvert or the questions of law it intends to put at issue.

5. Applicant alleges that The Western Colorado Power Company is a wholly owned or controlled subsidiary of Utah Power and Light Company; that the latter has also filed a Petition for Intervention in this proceeding; therefore, intervention by this Petitioner would be superfluous and serves no useful purpose.

WHEREFORE, Applicant respectfully prays that the Petition of The Western Colorado Power Company for Intervention be denied.

Respectfully submitted,

ROCKY MOUNTAIN POWER
COMPANY

By /s/ Smith W. Brookhart

Smith W. Brookhart

Brookhart, Becker & Dorsey

1700 K Street, N.W.

Washington, D. C. 20006

Its Attorneys

Dated at Washington, D.C.
the 21st day of June, 1965.

[1705-1706]

[1705]

CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, a copy of the within Answer to Petition to Intervene of The Western Colorado Power Company, by depositing the same in the United States mail on the 21st day of June, 1965, to: Mr. F. Gerald Irvine, Vice President, The Western Colorado River Company, 1407 West North Temple Street, Salt Lake City, Utah; and Sidney G. Baucom, Esq., attorney for Petitioner, 1407 West North Temple Street, Salt Lake City, Utah.

/s/ Smith W. Brookhart
Smith W. Brookhart

[1706]

[Filed Office of the Secretary Jun 21 12 01 PM '65
Federal Power Commission]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of)
) Project No. 2289
Rocky Mountain Power Co.)

APPLICANT'S ANSWER
to
PETITION TO INTERVENE
of
UTAH POWER AND LIGHT COMPANY

Applicant, above named, for answer to the Petition of the Utah Power and Light Company to Intervene, states and shows to the Commission as follows:

1. Applicant admits the allegations of Paragraphs 1 and 2 of the Petition.

[1706-1707]

2. Applicant denies the allegations of Paragraphs 3, 4, 5 and 6. Applicant denies that the facilities for which it seeks license in the above named application will physically and economically duplicate any lines, plants or systems of this Petitioner.

3. Applicant denies that the facility for which license is requested will be operated in open and destructive competition with Utah Power and Light Company to its detriment or to the detriment of its electrical consumers.

[1707]

4. Applicant further states that this Petition does not state facts from which this Commission may properly conclude that the intervention of the Utah Power and Light Company is in the public interest or that this Petitioner is entitled to participate in these proceedings in any other capacity or for any proper purpose whatsoever.

5. Applicant alleges that this Petition does not set out clearly and concisely the facts from which the nature of Petitioner's alleged right or interest can be determined or the grounds of the proposed intervention and does not adequately advise the parties or the Commission of the facts which it intends to controvert or the questions of law it intends to put at issue.

WHEREFORE, Applicant respectfully prays that the Petition of the Utah Power and Light Company for intervention be denied.

Respectfully submitted,
ROCKY MOUNTAIN POWER
COMPANY

By /s/ Smith W. Brookhart
Smith W. Brookhart
Brookhart, Becker & Dorsey
1700 K Street, N. W.
Washington, D. C. 20006
Its Attorneys

Dated at Washington, D. C.
the 21st day of June, 1965.

[1708, 1774]

[1708]

CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, a copy of the within Answer to Petition to Intervene of Utah Power and Light Company, by depositing the same in the United States mail on the 21st day of June, 1965, to: Mr. F. Gerald Irvine, Vice President, Utah Power & Light Company, 1407 West North Temple Street, Salt Lake City, Utah; and Sidney G. Baucom, Esq., attorney for Petitioner, 1407 West North Temple Street, Salt Lake City, Utah.

/s/ Smith W. Brookhart

Smith W. Brookhart

[1774]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Carl E. Bagge.

Rocky Mountain Power Company) Project No. 2289

ORDER GRANTING PETITIONS
TO INTERVENE

(Issued August 19, 1965)

On May 11, 1965, public notice was given of the filing by Rocky Mountain Power Company of an amended application for its proposed Project No. 2289, to be located on the South Fork of the White River, Sweetwater Creek, and its tributary Lake Creek, in Garfield, Eagle and Rio Blanco Counties, Colorado. Thereafter, within the time allowed for filing of protests and petitions, and pursuant to Section 1.8 of the Commission's Rules of Practice and Procedure the following-named companies (Petitioners) filed petitions to intervene:

Public Service Company of Colorado
Western Colorado Power Company
Utah Power and Light Company
Humble Oil & Refining Company

The Commission finds:

The participation by the above-named petitioners in this proceeding may be in the public interest.

The Commission orders:

The petitioners are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however*, that participation by petitioners should be limited to matters affecting certain rights and interests specifically set forth in their petitions for leave to intervene; and *Provided, further*, that the admission of the petitioners shall not be construed as recognition by the Commission that petitioners or any of them might be aggrieved by any order or orders issued by the Commission in this proceeding.

By the Commission.

(S E A L)

Gordon M. Grant,
Acting Secretary.

DC 23

[1775]

[1775]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman; L. J.
O'Connor, Jr., Charles R. Ross, and
Carl E. Bagge.

Rocky Mountain Power Company) Project No. 2289

ORDER FIXING HEARING

(Issued August 19, 1965)

By application originally filed on January 5, 1961, and supplemented on April 19, 1961, the Applicant, Rocky Mountain Power Company, proposed a project consisting of two conventional hydroelectric developments, called the Sweetwater and Dotsero power plants, having a combined installed capacity of 150,000 kilowatts, and located in Garfield, Eagle and Rio Blanco counties, Colorado. Public notice of this application was issued on June 1, 1961.

On May 4, 1962, the application was supplemented by a brief filing which proposed a substantially different alternative project. This was to be a mixed conventional and pumped storage project with an initial installed capacity of 165,000 kilowatts and an ultimate installed capacity of 705,000 kilowatts. By the Secretary's letter of May 31, 1962, the Applicant was asked to file its new proposal as a formal amendment of its application with fully developed accompanying exhibits.

Applicant filed this amendment on March 22, 1963. In this filing, it proposed the project for construction in three stages. At the initial stage, the Sweetwater power plant was to have an installed capacity of 165,000 kilowatts; at the second stage, this was to be increased to 330,000 kilowatts; at the final stage, it was to be raised to 495,000 kilowatts, and the Dotsero power plant was to be installed with 210,

[1775-1776]

000 kilowatts, for a combined ultimate development of 705,000 kilowatts, between four and five times the installed capacity of the project as originally proposed.

Because the extensive amending of the original application had caused uncertainty as to the details of the proposal as it then stood, the Applicant was requested by the Secretary's letter of July 29, 1963, "to assemble in a unified and revised application for a license, all the data and information on the proposed alternative project which have been filed with the Commission on various dates as exhibits or supplemental data." Applicant filed its revised application for the first and second stages of its proposed development on December 23, 1963, and November 30, 1964, and for the third stage on December 31, 1964. Public notice of the application, as revised and amended,

DC 23

[1776]

was given on May 11, 1965. However, the application is still deficient as to information regarding the financing of the project, and as to information on availability of markets for electric power, and the Applicant has been requested to remedy these deficiencies. Petitions to intervene have been filed by the Colorado Public Utility Commission, Humble Oil & Refining Company, Public Service Company of Colorado, Western Colorado Power Company and Utah Power & Light Company, and numerous informal protests regarding the possible effect of the project on the Flat Tops Primitive Area have been received.

In view of the importance and complexity of the issues raised by Rocky Mountain Power Company's application and the petitions to intervene, a public hearing would be desirable.

The Commission finds:

It is appropriate and in the public interest to hold a public hearing, as hereinafter provided.

[1776-1777]

The Commission orders:

(a) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly Sections 4(e), 10(a) and 308 thereof, and the Commission's Rules of Practice and Procedure, a public hearing shall be held on May 23, 1966, at 10:00 a.m. in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington D.C. respecting the matters involved and the issues presented in this proceeding.

(b) The following procedure is prescribed for this proceeding:

1. The Applicant shall file by March 1, 1966, with the Secretary of the Commission an original and ten copies of all testimony, including qualifications of the witnesses, and exhibits to be presented in Applicant's direct case.
2. The Applicant's filing shall include a full and complete statement of a definite plan for the financing of the project, and a full and complete statement of definite plans for the marketing of the electric power to be produced by the project. Failure to comply with this directive will constitute a basis for a motion to dismiss the application for a license for lack of completeness.
3. All other parties, including the Commission staff, shall file by April 29, 1966, with the Secretary, an original and ten copies of all direct testimony and exhibits including qualifications of witnesses.

[1777]

* * *

6. No exhibits, except those of which official notice may properly be taken, shall contain narrative material other than brief explanatory notes.

* * *

Gordon M. Grant
Acting Secretary

[1797]

[Received Nov 4 8 37 AM '65 Federal Power Commission]

BEFORE THE
FEDERAL POWER COMMISSION
OF THE UNITED STATES

In the Matter of

Rocky Mountain Power Company) Project 2289

PETITION TO INTERVENE

Now comes your Petitioner, Colorado Wildlife Federation, Inc., and respectfully represents that it and its members have an interest in the matters under consideration in the above-captioned Docket, and that it desires to intervene therein, and become a party thereto on behalf of itself and its members to protect their interests as they may appear, and as grounds for proposed intervention says:

I

That Colorado Wildlife Federation, Inc., is a voluntary not-for-profit corporation, incorporated under the laws of the State of Colorado, and is the State affiliate of National Wildlife Federation. The membership of your petitioner is composed of conservation groups and individual members located thruout Colorado, organized to promote and protect their interests in conservation, wildlife, wilderness, water, and soils matters in Colorado and nationally, with address 3851 Hoyt Street, Wheat Ridge, Colorado 80033.

II

The proposed Lost Solar, South Fork and Meadows reservoirs and their appurtenant roads, tunnels and other construction would encroach upon the present Flat Tops Primitive Area.

III

The South Fork of the White River and its tributaries are being considered to be designated as a "Wild River" and as

[1797-1798]

such could not be used in any way as proposed by this application for a power project

[1798]

on it or its tributaries. No power project should be authorized thereon until this matter is disposed of by the Second Session of the 89th Congress.

IV

The proposal includes tunnels which would take water from the White River and divert to the Sweetwater Creek thereby changing flows, etc. This might well affect fish and wildlife contrary to the best interest of the public.

V

There is an abundance of coal and fossil fuels available for the production of electricity in that general area so that hydroelectric production is unnecessary and generally considered to be higher cost than that produced by fossil fuels.

VI

The streams involved are important fishing streams and should not be altered by impoundments or diversions without adequate advance study by the State Game, Fish and Parks Commission and the U. S. Bureau of Sport Fisheries and Wildlife prior to issuance of a license. Because of deep snow and freezing conditions these studies cannot be made before the date of the hearing.

VII

Your petitioner filed a letter of protest with the Federal Power Commission on June 5, 1965, which was acknowledged by the Commission on June 30, 1965. This petition merely makes that protest a formal protest so that we may offer evidence if necessary. This petition, if granted by the Commission will in no way unduly broaden the issues involved.

[1798-1799]

THEREFORE, your petitioner prays leave to intervene in and become a party to the above-entitled proceedings and be made a party thereto

[1799]

with the right to have notice of and appear at all hearings to produce and cross-examine witnesses and to be heard in person or by counsel or other representative upon brief and oral argument, if oral argument is granted.

Respectfully submitted

COLORADO WILDLIFE FED-
ERATION, INC.

3851 Hoyt Street
Wheat Ridge, Colorado 80033

By /s/ A. J. Christiansen
A. J. Christiansen, President

Dated at Wheat Ridge, Colorado this 1st day of November 1965.

A. J. Christiansen, President	Ralph R. Hill, Secretary
Colorado Wildlife Federation, Inc.	Colorado Wildlife Fed-
3851 Hoyt St.	eration, Inc.
Wheat Ridge, Colo. 80033	3535 Benton St.
	Denver, Colo. 80212

VERIFICATION

State of Colorado) SS.
County of Jefferson)

A. J. Christiansen, being first duly sworn according to law, deposes and says that he is President of the Colorado Wildlife Federation, Petitioner herein, and that he is authorized on behalf of said Petitioner to make this verification; that he has read the foregoing Petition To Intervene and is familiar with the contents thereof, and that all averments of fact therein contained are true to the best of his knowledge, information and belief.

[1799-1800]

/s/ A. J. Christiansen

A. J. Christiansen

Subscribed to and sworn to before me in my presence by
said A. J. Christiansen, this 1st day of November 1965.

/s/ Lillian Damyanovick

Notary Public

SEAL

My Commission expires Jan. 29, 1967.

[1800]

BEFORE THE
FEDERAL POWER COMMISSION

Rocky Mountain Power Co. : Project No. 2289

MOTION FOR LEAVE TO INTERVENE OUT OF
TIME AND PETITION TO INTERVENE OF THE
COLORADO RIVER WATER CONSERVATION
DISTRICT

I. MOTION FOR LEAVE TO INTERVENE

The Colorado River Water Conservation District hereby moves the Commission for leave to intervene out of time in this proceeding so that it may participate fully as a party in any further proceedings. The District did file a formal protest with the Commission on June 9, 1965 to the granting of any license to the Rocky Mountain Power Company for the facilities embraced within Rocky Mountain's application for Project No. 2289 and amendments thereto. Rocky Mountain answered on July 9, 1965 asking that the Commission give the District's protest no substantive consideration. Thereafter, in its order of August 19, 1965, the Commission set the application for a hearing commencing May 23, 1966. The District has since conducted further studies of its own proposed developments in the area, as

[1800-1801]

well as of the Rocky Mountain proposals. These studies show that the District's proposed developments and some or all of those mentioned in Rocky Mountain's application, as the District now understands them, would be mutually exclusive. In

[1801]

view of the fact that the District's interests may be thus directly affected and inasmuch as the District's interests will not be adequately represented or protected by any other party to the proceeding, the District respectfully moves that it be permitted to intervene out of time as a party.

II. PETITION TO INTERVENE

As further grounds in support of its petition to intervene, the Colorado River Water Conservation District shows as follows:

A. This petition is filed pursuant to Section 308(a) of the Federal Power Act (49 Stat. 858; 16 U.S.C. 825g) and under Section 1.8 of the Commission's Rules of Practice and Procedure.

B. The Colorado River Water Conservation District is a public agency created by act of the Legislature of the State of Colorado (CSR 1963, §150-7-1), and is a "municipality" as defined in Sec. 3(11) of the Federal Power Act, 16 U.S.C. §796.

C. Communications with regard to this petition should be addressed to:

Philip P. Smith, Secretary-Engineer
Colorado River Water Conservation District
P. O. Box 239
Glenwood Springs, Colorado 81601

Kenneth Balcomb
Delaney & Balcomb
P. O. Box 149
Glenwood Springs, Colorado 81601

[1802-1803]

[1802]

Robert L. McCarty
McCarty and Wheatley
1200 Walker Building
Washington, D.C. 20005

D. The District was established to conserve and develop the water resources of the Colorado River and its tributaries within the State of Colorado which river system embraces a substantial area of western Colorado, including the area encompassed by the proposal of the Applicant in Project No. 2289.

E. Whereas Rocky Mountain has had granted to it conditional decrees relating to certain water uses in Water District No. 53 of the State of Colorado, such decrees may be lost for failure to make diligent application thereof, and do not in any event cover the plan of Rocky Mountain as contained in its amended application for Project 2289.

F. Other waters covered by claims filed by Rocky Mountain in Water District No. 43 of the State of Colorado conflict with claims made by the District, all of which are in litigation in the District Court in and for the County of Rio Blanco and State of Colorado, Civil Action No. 1269. These conflicting claims involve inter alia the reservoir site which Rocky Mountain calls Meadows in its application to the Commission which in most respects is identical with the Rio Blanco reservoir site which the District plans to develop. The development proposed by Rocky Mountain would preclude the development planned by the District and the projects are accordingly mutually exclusive.

[1803]

G. The District currently has in preparation an application to the Commission for a preliminary permit covering the Rio Blanco reservoir on the South Fork of the White River and other storage facilities, together with related works involving the White River and its tributaries, in order to conserve water for municipal, industrial, agricultural and

power purposes. The District is informed and believes that these works will be rendered impossible of development through the licensing of the facilities proposed by Rocky Mountain inasmuch as the waters, and in some respects the sites, to be developed are substantially the same.

H. In view of its rights and responsibilities as a public agency of the State of Colorado in connection with area involved in the Rocky Mountain proposal, the District believes that its participation in the Commission proceedings will be in the public interest. The District further asserts that its petition is presented for the purpose of protecting its rights and responsibilities and is not for the purpose of delay.

WHEREFORE, the District prays that the Commission issue an order granting it leave to intervene and to participate fully in any further proceedings had upon Project No. 2289.

Respectfully submitted,
COLORADO RIVER WATER
CONSERVATION DISTRICT

By /s/ Philip P. Smith
Philip P. Smith, Secretary-
Engineer

[1806-1807]

[1806]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of)
) Project No. 2289
Rocky Mountain Power Co.)

ANSWER OF APPLICANT TO MOTION FOR
LEAVE TO INTERVENE OUT OF TIME AND
PETITION TO INTERVENE OF COLORADO
RIVER WATER CONSERVATION DISTRICT

ANSWER TO MOTION

Petitioner, Colorado River Water Conservation District, (a) asserts no right conferred by a Statute of the United States; (b) is not a consumer served by Applicant Rocky Mountain Power Company; (c) holds no securities of Applicant; (d) is not a competitor of Applicant in the sale of electricity or natural gas; (e) states no facts from which Commission may properly conclude that its participation as an intervenor may be in the public interest or that intervention by it is necessary or appropriate to the administration of the statute under which this proceeding is brought as required by Section 1.8 of the Rules of Practice and Procedure; and (f) alleges no substantive fact not heretofore known to Petitioner and set forth in its Protest filed in this proceeding on or about June 8, 1965.

The records of this proceeding disclose that the Colorado Public Utilities Commission and the Colorado Water Conservation

[1807]

Commission have been admitted as intervenors in this proceeding, thus fully protecting and representing the public interest.

By its order of August 19, 1965, this Commission admitted as Intervenor, among others, Humble Oil and Refining Company. Said Oil Company alleges in its request for Leave to Intervene that it now holds, under option from this Petitioner, the beneficial interest in the water rights and reservoir site mentioned in this Petitioner's Protest filed herein on June 9, 1965, and referred to in this motion.

It is respectfully submitted that inasmuch as both the public interest and also the specific interest of this Petitioner if any are now fully represented by parties heretofore admitted as Intervenor in this proceeding; and this Petitioner having made its appearance in this proceeding as a Protestant; and the Petitioner meeting none of the specifically prescribed qualifications of an Intervenor, this Motion must be denied and dismissed.

*APPLICANT'S ANSWER TO PETITION
TO INTERVENE*

For answer to the Petition of Colorado River Water Conservation District, Applicant incorporates herein by reference the foregoing answer to the Motion for Leave to Intervene and states:

1. Denies that the petition meets the requirements of Section 308(a), Federal Power Act (49 Stat. 858; 16 U.S.C. 825g) or Section 1.8 of the Commission's Rules of Practice and Procedure, as alleged in paragraph A.

[1808]

2. Admits that the Colorado River Water Conservation District was created by the Legislature of the State of Colorado, but denies all other allegations in paragraph B of the Petition, and specifically denies that said District is a "Municipality", as that term is defined by the Federal Power Act, 16 U.S.C.A., Sec. 796(7).

The laws of the State of Colorado (Sec. 150-7-2, 1963 Colorado Revised Statutes), herein incorporated by reference, state that this Petitioner "is hereby declared to be a

[1808-1809]

body corporate under the laws of the State of Colorado". Said Petitioner is not a city, county, irrigation district, drainage district or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing or distributing power (Text of Colorado Statutes, Art. 7, Sections 150-7-1 to 150-7-6 attached).

Whether or not entities similar to this Petitioner are "municipalities" within the general definition of the term was considered by the Supreme Court of Colorado in *People v. Letford*, 79 Pac. 2d 274.

After quoting with approval the following definition from 43 C.J., page 72:

"Public corporations are all those created specially for public purposes as instruments or agencies to increase the efficiency of government, supply public wants, and promote the public welfare. Public corporations are classified as municipal, quasi-municipal, and public-quasi corporations. Public corporations include not only municipal corporations, but also all

[1809]

other incorporated agencies of government of whatever size and form or degree of organization. While all municipal corporations are public corporations, all public corporations are not municipal corporations."

the Court stated:

"Our Legislature did not confer the ordinary functions of local governments enjoyed by towns and cities on the Water Conservancy Districts contemplated, but did vest in them powers which have come to be associated with true municipal corporations, including the power of taxation to further its purpose."

The Colorado Court also quoted with approval from a California case, *Wheatley v. Superior Court*, 279 Pac. 989, as follows:

"The characterization 'quasi-municipal' we think accurate. The water district is not a true municipal corporation having powers of local government, but is an agency of the state vested with some of the powers and attributes of a municipality; hence it is not a municipal corporation but is quasi-municipal. 'Quasi' is defined as follows in 51 C.J. 119: 'A Latin word, in frequent use in the civil law, signifying "as if, almost." It marks the resemblance, and supposes a little difference between two objects.' "

3. Admits the allegations of paragraph D of the Petition.

4. Admits the Applicant is the owner of adjudicated rights to the use of waters of streams located in part within Water District No. 53 of the State of Colorado for the purpose of producing electric power in the manner and by the facilities described in its Application No. 2289 before this Commission. Applicant denies that Applicant is in any manner whatsoever failing to exercise due diligence in its efforts to apply said waters to beneficial use for the production of electric power as required by the terms of said decrees and the applicable laws of the State of Colorado, and further denies all other allegations in said paragraph E.

[1810]

Petitioner directs the attention of the Commission to the fact that the foregoing conclusions by Petitioner concerning due diligence are unsupported by any factual statements or reference; are issues to be determined pursuant to applicable laws of the State of Colorado by the Courts of competent jurisdiction of said State and are not properly a matter before this Commission.

Applicant specifically denies that this Petitioner holds any adjudicated water rights for power purposes or any other purpose in said District 53, and asserts that none of the Applicant's adjudicated water rights conflict as a matter of Colorado law with any water right which Petitioner may be claiming in District 53.

[1810-1811]

5. Applicant admits that it holds lawful, but yet unadjudicated, claims to waters of streams located in Water District No. 53 of the State of Colorado and asserts that all of said claims were lawfully initiated and filed in accordance with the applicable Colorado law prior to any claims asserted by Petitioner to the waters of the streams situated within said District 43.

Applicant is without knowledge or information as to the time, purpose, manner or use which the Petitioner plans to develop any waters in said District 43 as alleged in paragraph F and denies such allegations on information and belief.

Applicant alleges that Petitioner has sold to Humble Oil and Refining Company such inchoate rights if, in fact, it owns any to the use of waters in District 43 referred to in its

[1811]

petition and therefore no longer holds any beneficial rights or control over the development or use of such water.

Applicant alleges that such plans as may exist in the minds of spokesmen for the Petitioner cannot lawfully include the business of developing, transmitting, utilizing, or distributing electric power and that said activity is ultra vires the powers of the Petitioner. (See Section 150-7-1, et sub, 1963 Colorado Revised Statutes.)

6. Applicant has no knowledge or information concerning the activities or future conduct of Petitioner as alleged in paragraph G, and, therefore, denies the same on information and belief.

Applicant respectfully submits that the allegation of said paragraph G, should there otherwise be any vestige of fact or merit to said allegations, renders this Petition premature in time.

7. Applicant denies each and every allegation of paragraph H.

[1811-1812]

8. Applicant states that said Motion and Petition have not been initiated or prosecuted in good faith and in support thereof submits the following excerpt from the minutes of proceedings of the Board of Directors of this Petitioner taken from the record of admitted evidence in the water adjudication proceeding in the District Court of Rio Blanco County, Colorado, in Civil Action No. 1269, to which both this Applicant and Petitioner are parties.

[1812]

Mr. Robert Delaney, who was then a member of the Board of Directors of Petitioner and is now attorney of record for Petitioner in proceedings in the Colorado Courts, stated at a meeting of the Board of Directors of The Colorado River Water Conservation District, this Petitioner, on June 7, 1961, as follows:

"He then stated that the proposals under consideration at this meeting suggested to him that this District should align itself on the side of one or two interests in order that the two claimants could get decrees on *rather fictitious dates* that would work to the detriment of all future developments on the White River." (Emphasis added.)

Thereafter on October 31, 1961, Mr. Philip P. Smith, who is the same person who verifies the Petition under consideration as Secretary-Engineer of The District, stated as follows:

"Mr. Smith then reported that in view of the recent Supreme Court decision on the Eagle River matter, that he had discussed with Mr. Barnard and Mr. Frank Delaney a plan to make a filing with the State Engineer for water rights for the Flattops project, claiming the date of initiation of survey for that project by the Bureau of Reclamation. He explained that this date would precede the date of claim of the Rompoco for their project by approximately 3 years, and that he would be eligible to sign the map and statement for same since the survey work was

[1812-1813]

performed under his supervision. He noted that the reference to the Supreme Court decision justified the claim of this date, and in his opinion, the Court could not rule against such date without reversing itself.

"Mr. Smith thereupon read a resolution relative to the Rompoco which was adopted by the Board of Directors for the District as their adjourned meeting of January 13, 1961, as follows: 'I move that our representatives be directed to oppose the granting of any decree to the Rompoco save and unless it will not interfere with the proposed Bureau of Reclamation projects which would use the water from the same sources for western

[1813]

Colorado development, and also would not interfere with other western slope development.'

"In the discussion that followed, the executive committee agreed that the resolution constituted all the authority needed for proceeding with the preparation of filing and submission of the Statement of Claim into the adjudication proceedings scheduled for hearing on December 11, 1961.

"Thereupon, Mr. Williams MOVED that the Secretary-Engineer and counsel proceed immediately to prepare the map and statement and Statement of Claim in the name of the District and present that claim in the pending adjudication proceedings. Upon second by Mr. Horn, the motion was voted upon and passed unanimously."

"Rompoco" is a contraction of Rocky Mountain Power Company, the Applicant for Project No. 2289 which had initiated its appropriation of the same waters and site on September 7, 1957.

[1813-1814]

WHEREFORE, Applicant respectfully prays that the Petition of the Colorado River Water Conservation District for intervention be denied.

Respectfully submitted,
ROCKY MOUNTAIN POWER
COMPANY

By /s/ Smith W. Brookhart
Smith W. Brookhart
Brookhart, Becker & Dorsey
1700 K Street, N. W.
Washington, D. C. 20006
Its Attorneys

Dated at Washington, D. C.
the 3rd day of December, 1965.

[1814]

CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, a copy of the within Answer of Applicant to Motion for Leave to Intervene Out of Time and Petition to Intervene of Colorado River Water Conservation District, by depositing the same in the United States Mail on the 3rd day of December, 1965, to: Robert L. McCarty, Esquire, McCarty and Wheatley, 1200 Walker Building, Washington, D. C. 20005.

/s/ Smith W. Brookhart
Smith W. Brookhart

progress of the people of said district, shall be liberally construed to effect the purposes of this article.

Source: L. 35, p. 278, § 18; CSA, C. 138, § 238; CRS 53, § 149-7-18.

150-6-19. Repeal—saving clause.—All laws or parts of laws, except sanitary laws, conflicting in any way with any of the provisions of this article in regard to improvements or improvement districts, or otherwise interfering with the accomplishment of the purposes of this article according to its terms, are hereby declared inoperative and noneffective as to this article as completely as if they did not exist. But all such laws and parts of laws shall not in any other way be affected by this article.

Source: L. 35, p. 279, § 20; CSA, C. 138, § 239; CRS 53, § 149-7-19.

ARTICLE 7

Colorado River Conservation District

- | | |
|--|---|
| 150-7-1. Declaration. | 150-7-17. Improvement district bonds. |
| 150-7-2. District body corporate—area. | 150-7-18. Assessments perpetual lien. |
| 150-7-3. Board of directors. | 150-7-19. Invalid assessments — board remedy. |
| 150-7-4. Vacancies—secretary and treasurer. | 150-7-20. Assessment record as evidence. |
| 150-7-5. General powers. | 150-7-21. Remedies in case of faulty notice. |
| 150-7-6. Principal office—meetings. | 150-7-22. District may issue bonds. |
| 150-7-7. Tax—assessments—collections. | 150-7-23. Lawful contracts. |
| 150-7-8. Organization. | 150-7-24. Maintenance assessment. |
| 150-7-9. Petition. | 150-7-25. Definition of terms. |
| 150-7-10. Notice of hearing on petition. | 150-7-26. Compensation of directors. |
| 150-7-11. Protesting of petitions. | 150-7-27. Annual levy limit. |
| 150-7-12. Board of directors to prepare plans. | 150-7-28. Investment of surplus funds. |
| 150-7-13. Appointment of appraisers. | 150-7-29. Sinking fund. |
| 150-7-14. Board bound by financing plan. | 150-7-30. District rules and regulations. |
| 150-7-15. Compensation of appraisers. | 150-7-31. Court to ratify contracts. |
| 150-7-16. Directors may make assessments. | 150-7-32. Allocation of water or service. |

150-7-1. Declaration.—In the opinion of the general assembly of the state of Colorado the conservation of the water of the Colorado river in Colorado for storage, irrigation, mining and manufacturing purposes and the construction of reservoirs, ditches and works for the purpose of irrigation and reclamation of additional lands not yet irrigated, as well as to furnish a supplemental supply of water for lands now under irrigation, is of vital importance to the growth and development of the entire district and the welfare of all its inhabitants and that to promote the health and general welfare of the state of Colorado an appropriate agency for the conservation, use and development of the water resources of the Colorado river and its principal tributaries should be established and given such powers as may be necessary to safeguard for Colorado, all waters to which the state of Colorado is equitably entitled under the Colorado river compact.

Source: L. 37, p. 997, § 1; CSA, C. 138, § 199(1); CRS 53, § 149-8-1.

150-7-2. District body corporate—area.—That there is hereby created a water conservation district to be known and designated as "The Colorado River Water Conservation District." Such district is hereby declared to be a body corporate under the laws of Colorado. Said district shall comprise the following area and territory of the state of Colorado: Grand county,

Routt county, Moffat county, Rio Blanco county, Ouray county, Mesa county, Garfield county, Pitkin county, Eagle county, Delta county, Gunnison county, Summit county, those parts of Hinsdale and Saguache counties lying west and north of the continental divide and being within the drainage basin of the Gunnison river, and that part of Montrose county not included in the Southwestern water conservation district as set forth and described in section 150-8-2.

Source: L. 37, p. 998, § 2; CSA, C. 138, § 199(2); L. 51, p. 691, § 1; CRS 53, § 149-8-2; L. 55, p. 937, § 1; L. 61, p. 854, § 1.

150-7-3. Board of directors.—(1) The Colorado river water conservation district shall be managed and controlled by a board of fifteen directors. One of said directors shall be from each of the respective counties in said district. He shall be selected by the board of county commissioners of the county in which he resides. He may be a member of the board of county commissioners of such county. He shall have been a resident of such county, or if only a part of a county is included within the boundaries of the said district, then a resident of such included part, for a period of at least two years prior to the date of his appointment and shall be a freeholder who has paid taxes in the county of his residence during the calendar year next preceding his appointment. The members of said board shall hold office for a term of three years and until their successors are appointed and qualified, except as herein otherwise provided. The regular term of office of each director shall commence on the third Tuesday of January following his appointment. The board of county commissioners of the county in which a director, whose term of office is about to expire, resides, shall, at its first meeting in January, appoint a successor who shall take office on the third Tuesday in January following his appointment.

(2) The members of the board of directors of said district who are now in office shall hold their respective office for the period of time for which they were selected to serve, and their tenure of office shall not be affected by this amendatory section. Within sixty days after this section becomes effective, each of the boards of county commissioners of the counties of Hinsdale and Saguache shall appoint a director from such county with the qualifications above prescribed, to serve as a member of the board of directors of the Colorado river water conservation district. The director from Hinsdale county shall hold office until the third Tuesday of January, 1962, and the director from Saguache county shall hold office until the third Tuesday of January, 1963. Upon expiration of the several terms of office of the directors to be appointed under the terms of this section, successors shall be appointed as herein provided to serve for the regular term of three years.

Source: L. 37, p. 998, § 3; CSA, C. 138, § 199(3); L. 51, p. 692, §§ 2, 3; CRS 53, § 149-8-3; L. 55, p. 937, § 2; L. 61, p. 854, § 2.

150-7-4. Vacancies—secretary and treasurer.—The office of director shall become vacant when any member ceases to reside in the county from which he was appointed. In the event a vacancy occurs in said office by reason of death, resignation, removal, or otherwise, it shall be filled by the board of county commissioners of the county from which said member originally came. Before entering upon the discharge of his duties, each director shall take an oath to support and defend the constitution of the United States and of the state of Colorado and to impartially, without fear or favor, discharge the duties of a director of said district. The board of directors of said district shall appoint a secretary and a treasurer. The

The board shall likewise hire such other employees, including engineers and attorneys, as may be required to properly transact the business of the district, and said board is authorized to provide for the compensation of the secretary and treasurer and other appointees. The treasurer shall be required by the board to give bond with corporate surety in such amount as the board may fix and which it deems sufficient to protect the funds in the hands of the treasurer or under his control. Such bond is to be subject to the approval of the board.

Source: L. 37, p. 999, § 4; CSA, C. 138, § 199(4); CRS 53, § 149-8-4.

150-7-5. General powers.—In its corporate capacity, such district shall have power to:

(1) Sue and be sued in the name of the Colorado River water conservation district;

(2) To acquire, operate and hold in the name of the district such real and personal property as may be necessary to carry out the provisions of this article, and to sell and convey such property or its products, as provided in this article, or when said property is no longer needed for the purposes of said district;

(3) To make surveys and conduct investigations to determine the best manner of utilizing stream flows within the district, the amount of such stream flow or other water supply and to locate ditches, irrigation works and reservoirs to store or utilize water for irrigation, mining, manufacturing or other purposes, and to make filings upon said water and initiate appropriations for the use and benefit of the ultimate appropriators, and to do and perform all acts and things necessary or advisable to secure and insure an adequate supply of water, present and future, for irrigation, mining, manufacturing and domestic purposes within said districts;

(4) To make contracts with respect to the relative rights of said district under its claims and filings, and the rights of any other person, association, or organization seeking to divert water from any of the streams within said district;

(5) To contract with any agencies, officers, bureaus and departments of the state of Colorado or the United States of America, including the board of control of the state penitentiary, to obtain services or labor for the initiation or construction of irrigation works, canals, reservoirs, power plants, or retaining ponds within said district;

(6) To enter upon any privately owned land or other real property for the purpose of making surveys or obtaining other information, without obtaining any order so to do, but without causing any more damage than is necessary to crops or vegetation upon such land;

(7) To organize special assessment districts at different times for the purpose of establishing effective agencies to secure funds to construct reservoirs or other irrigation works under various types and plans of financing, including, among others, by issuance of revenue warrants only, by the issuance of bonds or revenue obligations constituting a lien up to a specified, designated amount against the lands in said special improvement district, payable out of special assessments or by general obligations of such special improvement districts;

(8) To contract with the United States government, the bureau of reclamation, or other agencies of the United States government, for the construction of any such works and the issuance of such obligations as the special improvement districts may have the power to issue in payment of costs of construction and maintenance of said works;

(9) To have and to exercise the power of eminent domain to acquire ditches, reservoirs or other works or lands or rights-of-way therefor which

said district or any subdivision thereof, or special improvement districts created pursuant to the power hereby conferred, may need to carry out the plans of said district or the improvement districts therein, and in general to exercise any and all rights and powers of eminent domain conferred upon other agencies as provided in chapter 50, C.R.S. 1963;

(10) To file upon and hold for the use of the public sufficient water of any natural stream to maintain a constant stream flow in the amount necessary to preserve fish, and to use such water in connection with retaining ponds for the propagation of fish for the benefit of the public;

(11) To exercise such implied powers and perform such other acts as may be necessary to carry out and effect any of the express powers hereby conferred upon such district.

Source: L. 37, p. 1000, § 5; CSA, C. 138, § 199(5); CRS 53, § 149-8-5.

150-7-6. Principal office—meetings.—The board of directors of said district shall designate a place within the district where the principal office is to be maintained and may change such place from time to time. Regular quarterly meetings of said board shall be held at said office on the third Tuesday in the months of January, April, July and October. The board shall also be empowered to hold such special meetings as may be required for the proper transaction of business. Special meetings may be called by the president of the board or by any three directors. Meetings of the board shall be public and proper minutes of the proceedings of said board shall be preserved and shall be open to the inspection of any elector of the district during business hours.

Source: L. 37, p. 1002, § 6; CSA, C. 138, § 199(6); CRS 53, § 149-8-6.

150-7-7. Tax—assessments—collections.—(1) (a) As soon as the district shall have been organized and a board of directors shall have been appointed and qualified, such board of directors shall have the power and authority to fix the amount of an assessment upon the property within the district, not to exceed two-tenths of one mill for every dollar of assessed valuation therein as a level or general levy to be used for the purpose of paying the expenses of organization, for surveys and plans, to pay the salaries of officers and the per diem allowed to directors and their expenses, and for other incidental expenses which may be incurred in the administration of the affairs of the district.

(b) Said board of directors shall also have the power and authority to fix the amount of an additional assessment upon the property within the district, not to exceed two-tenths of one mill for every dollar of assessed valuation therein, as a level or general levy, to be used for the purpose of paying the costs and expenses of construction or partial construction of any project designed or intended to accomplish the utilization of water, by storage or otherwise, for any beneficial uses or purposes. A two-thirds vote of the membership of said board shall be required to fix the amount of each of said levies.

(c) The amount of each assessment on each dollar of assessed valuation shall be certified to the boards of county commissioners of the various counties in which the district is located and by them included in their next annual levy for state and county purposes. Such amounts so certified shall be collected for the use of such district in the same manner as are taxes for county purposes, and the revenue laws of the state for the levy and collection of taxes on real estate for county purposes, except as modified. This section shall be applicable to the levy and collection of the

[1823-1824]

[1823]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

ERRATUM NOTICE

(February 10, 1966)

ORDER GRANTING PETITIONS TO INTERVENE

(Issued February 1, 1966)

All references to the "Colorado River Water Conservancy District" should be changed to read: "Colorado River Water Conservation District".

Gordon M. Grant,
Acting Secretary

[1824]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: David S. Black, Acting Chairman;
L. J. O'Connor, Jr., Charles R.
Ross, and Carl E. Bagge.

Rocky Mountain Power Company) Project No. 2289

ORDER GRANTING PETITIONS TO INTERVENE

(Issued February 1, 1966)

The Colorado Wildlife Federation, Inc., and the Colorado River Water Conservancy District on June 7, 1965 and June 9, 1965, respectively, filed protests with respect to Rocky Mountain Power Company's application for license for Project No. 2289. These protests were timely filed.

Thereafter, on August 19, 1965 we issued an order fixing a hearing on Rocky Mountain Power Company's appli-

[1824-1825]

cation. Now, the Colorado Wildlife Federation, Inc., and the Colorado River Water Conservancy District by petitions filed November 4, 1965 and November 22, 1965 respectively, seek to intervene in this proceeding in order to participate as parties in the scheduled hearing. These petitions are not timely, but under the circumstances, and in accordance with Section 1.8(d) of our Rules of Practice and Procedure, their late filing will be allowed.

The Commission finds:

The participation in this proceeding by petitioners, Colorado Wildlife Federation, Inc., and the Colorado River Water Conservancy District may be in the public interest.

The Commission orders:

The above-named petitioners are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however*, that participation by petitioners should be limited to matters affecting certain rights and interests specifically set forth in their petitions for leave to intervene; and *Provided further*,

[1825]

that the admission of the petitiones shall not be construed as recognition by the Commission that petitioners or either of them might be aggrieved by any order or orders issued by the Commission in this proceeding.

By the Commission.
(S E A L)

Gordon M. Grant,
Acting Secretary.

[1826]

[1826]

March 1, 1966

Federal Power Commission
441 G Street, N.W.
Washington 25, D.C.

*Re: Project No. 2289 - Colorado.
Rocky Mountain Power Company.*

Gentlemen:

Pursuant to the Commission's order in this proceeding dated August 19, 1965, there are submitted herewith, in support of the application for a license, the originals and ten copies of the following:

Testimony in support of license

Exhibits: Volume I
 Volume II
 Volume III
 Volume IV
 Volume V-A
 Volume V-B
 Volume VI
 Volume VII
 Volume VIII
 Volume IX
 Volume X
 Volume XI

Service of copies of the subject documents upon all participants of record has been duly accomplished in keeping with the Commission's Rules of Practice and Procedure.

Very truly yours,

Smith W. Brookhart
Attorney for Applicant

bcc: Charles F. Brannan, Esq.
 Mr. Paul G. Van Sickle
 Mr. Robert B. Craig

[1875-1876]

[1875]

TESTIMONY BEFORE THE FEDERAL
POWER COMMISSION
PROJECT No. 2289
SWEETWATER HYDROELECTRIC PROJECT

By

Paul G. Van Sickle

1. Q. Will you please state your name and address? A. Paul G. Van Sickle, 275 University Boulevard, Denver, Colorado.

2. Q. What is your occupation or profession? A. I am a civil engineer.

3. Q. I now hand you Exhibit 100-08 and ask if this exhibit was prepared by you. A. It was.

4. Q. Please describe Exhibit 100-08. A. Exhibit-100-08 consists of 5 pages and shows my academic background, my membership in professional societies, and a chronological summary of my professional experience.

5. Q. What is your present position? A. I am president of Van Sickle Associates, Inc.

[1876]

6. Q. How long have you been acting in that capacity? A. Since the formation of the company in 1954.

7. Q. What is Van Sickle Associates, Inc.? A. Van Sickle Associates, Inc., is a firm of consulting engineers formed by me to specialize in the planning and development of projects.

8. Q. In what way is this type of work handled by your firm? A. Key staff members with well rounded experience are chosen for their capacity to interpret and carry out a variety of assignments. For specialized engineering problems, well qualified consultants and firms are retained. In this way, almost unlimited talent is available to assist with special assignments.

[1876-1878]

9. Q. In your capacity as president of Van Sickle Associates, Inc., what have been your responsibilities? A. I have been responsible for the management and direction of the company, for decisions on methods to be used in accomplishing engineering assignments, for coordination of all work done by the firm, and for general administration and supervision of all planning, studies, reports, cost estimates, design, design criteria,

[1877]

and other engineering aspects of the work done by the Company.

10. Q. Has Van Sickle Associates, Inc., been retained by Rocky Mountain Power Co.? A. Yes. The company was retained in November, 1958.

11. Q. What assignment was given to Van Sickle Associates by Rocky Mountain Power Co.? A. We were instructed to make engineering studies for the hydroelectric development of Sweetwater Creek and the South Fork of the White River at Meadows Dam and the development of Sweetwater Creek and its tributaries.

12. Q. What has been your relationship to Project No. 2289? A. As President of Van Sickle Associates, Inc., I have directed the overall engineering planning, design and estimates prepared by the firm and have arranged for and coordinated the work of consultants used by the firm in connection with Project No. 2289.

13. Q. In order to administer and coordinate the work assigned to your firm did you or your staff undertake a study of water available under the project?

[1878]

A. Yes. Members of our organization prepared a comprehensive study of water resources available to the project under the water claims filed by Rocky Mountain Power Co. with the Colorado State Engineer. This report is offered in these proceedings as Exhibit No. -100-20 by Mr. Pederson.

[1878-1879]

14. Q. You earlier described your company's method of using consultants and advisors in addition to your own staff members in carrying out engineering assignments. Specifically, what consultants and consulting engineering firms were retained by your company to assist with the Sweetwater Hydroelectric Project assignment? A. Raymond Stuck, former Chief of the Civil Section of the Corps of Engineers, U. S. Army, and now a private consultant residing in Fort Myers, Florida, was consulted on dam design and will testify later in these proceedings in regard to his finding. Dr. Frank Nickell, eminent consulting geologist of San Francisco, California, and N. Wood Base, now retired from the U. S. Geological Survey, advised Van Sickle Associates, Inc., with respect to the geology of the project area. Mr. Bass will add his testimony later in this hearing. Tudor Engineering Company of San Francisco was consulted on powerhouse design.

[1879]

Ralph L. Chantrill of London, England, an expert on Hydroelectric Installation with world wide experience on large power and distribution systems, was consulted with respect to design and operation of the hydro plants, as well as on an associated thermal plant and transmission line to load centers in Nebraska. He also will testify later in these proceedings. In regard to the associated transmission line, Ralph Goodrich Jr., and Donald C. Millard, both retired Bureau of Reclamation experienced transmission engineers, were consulted on the high-voltage aspects of the line and assisted in the preliminary design of the system. Harold Lee retired head of the power department of the Bureau of Reclamation advised and assisted with market investigations. Sir William Halcrow & Sons of London, England, power and distribution engineers with world wide experience, and Henningson, Durham & Richardson of Omaha, Nebraska, consulting engineers in the field of power generation and distribution in the projects market area, advised Van Sickle Associates along the lines of their own experience. Stearns, Roger Company, a Denver, Colorado, engineering firm and

[1879-1881]

consultant to various power distributors, was asked to review and criticize the engineering and operational aspects of the Sweetwater Hydroelectric Project.

[1880]

15. Q. Will you please briefly state the results of the studies made by your firm on the Sweetwater Hydroelectric Project? A. As a result of our preliminary studies, we advised Rocky Mountain Power Co. that the Sweetwater Hydroelectric Project development appeared physically, technically, and economically sound, from both engineering and financial viewpoints. We recommended that a Federal Power Commission license be sought.

16. Q. Will you describe briefly the Sweetwater Hydroelectric Project? A. The Sweetwater Hydroelectric Project is a development for peaking capacity based on pumped storage generation, supplemented by generation from stored runoff on certain tributaries of the Colorado River in Colorado. The ultimate development will include three major features:

1. The first stage of the development, the Sweetwater complex, will have a forebay with 3,000 acre-feet of usable capacity and a maximum water level of 9,147-foot elevation. This water will drop 1,372 ft. through penstocks and tunnels to the reversible pump-turbines for generating electricity, after which it will

[1881]

be discharged into Sweetwater Lake, the afterbay, where it becomes available to be returned to the forebay at off peak hours by operating the same units in reverse. This afterbay will have a maximum water-surface level of 7775.0 foot elevation and a capacity of 11,000 acre-feet. The minimum water surface of 7710 is that of the present Sweetwater Lake level and the enlarged lake will never be drawn below this level.

2. The LOST SOLAR power complex scheduled for future construction will be located on the South Fork

[1881-1882]

- of the White River about 16 miles below the Budge resort site of the Meadows dam. The Lost Solar forebay will have 3,500 acre-feet of usable capacity, with a maximum water level of 9290.0-foot elevation; from which the water will be dropped 1,350 ft. by penstock tunnels to other reversible pump-turbines for generation purposes. These units will discharge into an afterbay with a maximum of 7940.0-foot elevation and a usable capacity of 9,700 acre-feet. This water also becomes available for re-use by means of reversible units.
3. The MEADOWS reservoir, an auxilliary upper storage reservoir on the high reaches of the South Fork of the

[1882]

White River with a maximum water level of 9280.0-foot elevation, will have a usable storage capacity of 123,000 acre-feet to be connected by tunnels, one running east to the Sweetwater forebay and another, west to the Lost Solar forebay. The Meadows reservoir, with its large capacity, is located approximately midway between the Sweetwater forebay and the Lost Solar forebay. The tunnels make it possible for both Sweetwater and Lost Solar stations to utilize the extra storage capacity for weekend pumping during off-peak hours. This permits the operation of the system on a highly efficient weekly cycle and substantially increases the daily peaking capacity of the integrated hydroelectric facilities.

The operation of the reservoirs and tunnels has been studied extensively and the design and operation of these features has been planned for maximum use of water and head. This detailed study is given in Exhibit No. -100-23, offered by Mr. R. L. Chantrill.

These features are shown on Exhibit "S" of the amendment to application for License No. 2289 - Colorado, Sweetwater Hydroelectric Project, Stage III, Exhibit 100-02.

[1883-1884]

[1883]

It is contemplated that the project will be developed in three stages to be known as Stage I, Stage II, and Stage III. Current analyses of the projected load requirements indicate that completion of Stage II should follow immediately after Stage I. Mr. Schaufelberger and Mr. Chantrill will testify later in these proceedings with respect to the projected loads described in Exhibit No. 100-34. It is for these two stages of the project that the applicant requests license at this time.

17. Q. Will you describe the major features of these stages. A. The first stage in the development of the project is construction of the Sweetwater pumped storage facility. This includes Sweetwater Dam to raise the level of Sweetwater Lake, from the present 7710 to El. 7775. The Forebay Dam to create a storage reservoir; the Penstock Tunnel to carry water to and from the Forebay reservoir to the steel penstocks; the Forebay tunnel to be used to convey water to and from the Forebay during the third stage operations. The underground power plant at Sweetwater Lake, the Switchyard adjacent to the power plant, which will link the power plant to the transmission system, the steel penstocks to carry water to and from the reversible pump-turbines and the necessary accessory roads to the power plant and the Forebay Dam.

[1884]

The Sweetwater Dam is an earth filled dam approximately 80 feet above the foundation. Water in the existing Lake will be raised 60 feet. The Forebay Dam is an earth and rock structure approximately 2,100 feet long at the crest and a maximum height above cutoff approximately 250 feet. Maximum water depth to be 150 feet.

The penstock tunnel leading from the Sweetwater Forebay into the steel penstock will be in two section, one of which will be 20 feet in diameter and approximately 2,050 feet long, the second will be 465 feet long made up of three 15 foot diameter concrete lined tunnels one to connect to each

[1884-1885]

of the three penstocks when constructed. The forebay tunnel connecting the forebay with Cross Creek conduit which leads into the Plateau Tunnel and Meadows reservoir will be 12 feet in diameter and approximately 1,400 feet long. This tunnel which is required for Stage III operations will be constructed with Stage I since the tunnel portal at the forebay reservoir is below water level and its construction at a later date can only be accomplished by loss of the use of the Forebay reservoir.

The foundation of the underground powerplant will be approximately 120 feet below bedrock. The plant to the presently planned three stages will house six pump-turbines each with

[1885]

a 100/94 megawatt generating unit, the units will be installed in a cavern approximately 300 feet long with a finished diameter of 56 feet. Each unit will be located below a 15 foot diameter access shaft to the surface level of the plant. In Stage I the foundations for all six units will be constructed but only two units will be installed.

The Switchyard is 500 feet by 240 feet and will provide space for three generator and five feeder bays and one buss coupler.

The penstock will be constructed of steel plate varying diameter. The plate thickness varies from 5/8 inches to 2 inches, depending on the hydraulic pressures has to withstand the particular section of pipe. The penstock will be slightly more than 5000 feet long of which all but 785 feet will be buried below ground surface.

The access roads will provide a roadway suitable for construction purposes which may later be used during the operation of the project. The powerplant access road will be 2.63 miles long and the Sweetwater Forebay access road will be 3.7 miles long. These roads will connect with existing county roads and Forest Service roads.

[1886-1887]

[1886]

The second or Stage II of this project will permit the connection of the second of the three penstocks to the tunnel section. The Stage II portion of the power plant construction will include furnishing and installing the second pair of pump-turbine units with the 100/94 megawatt generator units and necessary accessories. The Sweetwater switchyard will be increased accordingly by the addition of the necessary electrical equipment. The second of the three penstocks will be installed. This penstock will be similar in all respects to that installed under Stage I.

The third Stage of the Sweetwater Project will require not only extension of the features described for Stages I and II in the way of a modification to the Penstock tunnel, expansion at the powerplant and switchyard, and another penstock, but will also include in its later stages of development the Lost Solar Power plant with four or more 100/94 megawatt units. Meadows Dam and other related features not only for power production but also water service. These works are described in the amended application for License No. 2289 - Colorado, Sweetwater Hydroelectric Project, Stage III, Exhibit 100-02.

18. Q. What is the construction program for the work under this project?

[1887]

A. A construction progress chart has been prepared and is presented here as Exhibit 100-09. On this chart the start of and the projected completion dates for each major feature of Stage I and II and the commencement of Stage III are shown.

19. Q. I now hand you Exhibit-No. 100-09a containing 47 pages the first page of which is titled "Sweetwater Hydroelectric Project", Estimate of Capital Cost Stages I and II and ask if this exhibit was prepared by you or under your direction? A. The material contained in this exhibit was prepared by me or was prepared under my direction.

[1887-1889]

20. Q. Please describe Exhibit 100-09a. A. Exhibit 100-09a contains 47 pages. The first page is titled, "Estimate of Capital Costs," the second page is a summary of the estimates of costs for Stages I and II of the Sweetwater project. Pages 3 through 44 are copies of schedules of prices of construction contracts and equipment contracts.

21. Q. Please explain the method used in arriving at the cost of the Project? A. The cost of the first two stages of the project is based on firm prices incorporated in contracts executed with responsible

[1888]

contractors who have had many years of specialized experience both in the execution of construction work of this nature and in the manufacture of the plant and equipment.

22. Q. Did you prepare a detailed construction estimate for the project? A. Yes, my firm prepared a very detailed estimate.

23. Q. How does this estimate compare with the costs and prices incorporated in the contracts? A. Very closely.

24. Q. How does the total overall price, based on these contracts, for the works at site compare with the amounts included in the estimates for Stages I and II of the application No. 2289, dated November 30, 1964. A. The aggregate total of the firm prices for Stages I and II in the contracts placed for the Sweetwater Dam, Sweetwater Forebay Dam and access roads, penstock tunnels, penstocks, power house excavation, concreting and erection of the plant is 2 percent below the estimated prices submitted in the application in November 1964.

25. Q. Are you satisfied with the ability of the contractors to meet their firm prices?

[1889]

A. Yes. The contractor for Sweetwater Dam and the Forebay Dam has had considerable experience in this class of work, and after an examination of the site he was prepared to accept a contract for these works on the basis of a fixed price.

[1889-1890]

The contractor for the excavation and concreting of the tunnels for the Power House and the forebay penstock tunnels is probably the most experienced contractor in that particular field in the U.S.A., and having examined the site and the work to be done, has signed a firm price contract for this work. He is to be associated with a contractor who has constructed, erected and commissioned many hydro power plants.

26. Q. How about the plant to be installed? A. This has been developed and designed to meet the specialized conditions pertaining to pumped-storage plants. The development and design has been based on exhaustive model tests to ensure that the optimum performance is secured.

27. Q. Are you satisfied that the prices are both reasonable and competitive? A. Yes, and especially when one considers the very exhaustive model tests of the turbine runners, the hydraulic layout, the

[1890]

draft tube proportions which have been carried out and which costs are included, the prices are very competitive and reasonable.

28. Q. What about the electrical plant? A. This also has involved a great deal of engineering and development to make these machines suitable for the particular duty of generation, motoring for driving the pumps, providing reactive power for the long transmission lines, and the prices in the contracts are both firm and reasonable.

29. Q. Are you satisfied regarding the competence of the firms entrusted with these contracts? A. Yes, the hydraulic manufacturer has had the benefit and use of a fully equipped laboratory for the development and design of turbines, pumps and hydraulic machinery for upwards of 40 years. The electrical manufacturer has had extensive experience over more than 35 years of designing and manufacturing generators for long transmission lines, and in recent years has installed a number of reversible generator-motors for pumped storage plants.

[1891-1892]

[1891]

30. Q. How do the overall prices for Stages I and II compare with the prices submitted in the application? A. For Stage I, the gross total price is 2-1/2 percent below estimate, for Stage II, 1 percent below, and for Stage III, 1/2 percent above estimate.

31. Q. How do you know these prices will not be exceeded? A. In every case the contracts for Stages I and II are based on firm prices without escalation. The only exception being the Bethlehem Steel Corporation price for plate steel for penstocks.

32. Q. For what period of time are the prices for Stage I and II valid? A. Contract prices are valid for commencements of work by August 1, 1966.

33. Q. Do you think you will be able to proceed with your work by that time? A. In order to supply to the Consumers. Public Power District in Nebraska by January 1, 1970, it is essential that work B stated this summer. We intend to make every effort to comply.

34. Q. What are the prices for the cost of each stage of the Sweetwater development?

[1892]

A. The prices for the three stages of the Sweetwater Powerplant excluding Meadows and Lost Solar which are in the third stage are:

For Stage I \$30,961,664 - 2-Units 100/94 mw.

For Stage II 13,942,753 - 2-Units 100/94 mw.

For Stage III 14,716,930 - 2-Units 100/94 mw.

35. Q. What allowances has been made for contingencies, Engineering costs, general expense and interest during construction? A. Over and above the firm construction contracts an allowance has been included in the estimate of 10 percent for contingencies, 15 percent for engineering, administrative and general expense and 6 percent per an interest on capital during construction of the project. Most of the project falls on U. S. Government land. An al-

[1892-1894]

lowance was included in the amount of \$220,000 to purchase land at Sweetwater Lake. An allowance was included in the amount of \$600,000 for preliminary engineering cost.

36. Q. Why did you enter into contracts prior to receiving a license to build the project. A. We recognize the importance of establishing a firm price for the project in order to give assurance to the bankers that the

[1893]

project can be constructed within the budget and the purchasers of power will be assured of having a guaranteed price for power. Rocky Mountain Power Co. as a Company has no previous experience in costing such a project therefore preferred to firm up the cost by contracts.

37. Q. What about the cost of Stage III of the project? A. The remaining for Stage III of the Sweetwater project are shown on the summary sheet page 2 of Exhibit 100-09a. These features include the Meadows Dam and the Lost Solar Power Plants and related structures. The details of this estimate are shown in Exhibit 100-09a, pages 6 through 84. Construction costs for the features of the Meadows Dam, Lost Solar Powerplant and related structures have been based on quantities which have been taken from the plans and specifications for these structures. No bids were taken for this work. These prices however, are the result of comparison of the type, kind, quality and location of similar work. To these estimated unit costs were added 10 percent for contingencies and 15 percent for engineering, administration, administration, general expense. Interest during construction was added in the amount of 6 percent/an.

38. Q. Have you made an economic evaluation of the project?

[1894]

A. Yes. This is detailed in Exhibit-100-14.

39. Q. I now hand you Exhibit-100-14 and ask you whether this exhibit was prepared by you? A. Yes, it was.

40. Q. Please describe Exhibit 100-14. A. This exhibit

[1894-1895]

contains 23 pages. Page 2 of this exhibit titled, "Economic Feasibility" is a summary of capital costs and operating costs compared with estimated revenues for the Sweetwater Project and the projects of its two affiliated companies, Oak Creek Power Co. and East-West Intertie Inc. This analysis assumes that the projects of the three companies operate as a pool which permits Rocky Mountain Power Co. to derive the maximum benefit from its operation. This is fully described in the testimony to be given later by Mr. Chantrill in this proceeding.

The feasibility studies on the Oak Creek Thermal Electric Project are contained in Exhibit-100-10 and its addendum. The recent cost estimate, Exhibit 100-11. Similar studies in the East-West Intertie are in Exhibit 100-12, which includes Exhibit 100-'3, the recent cost estimate.

[1895]

The economic analysis shows that the Sweetwater project and its affiliated projects are profitable at 5-1/2 percent per annum interest. Calculations were also made using interest rates of 4 and 4-1/2 percent per annum. Interest rate of 2 percent per annum is calculated on transmission lines alone, since the projected line will be serving rural areas in Nebraska.

41. Q. How did you arrive at the performance rating of the hydroelectric units under the varying operating conditions? A. Pages 22 and 23 of Exhibit-100-14 is a letter from AEI-Boving Sweetwater partnership indicating that on the basis of model tests the combined pump-turbine/generator-motor units will have the following ratings.

- 1 - At minimum head - 82,500 kw.
- 2 - At Average head - 95,000 kw.
- 3 - Peak capability 100,000 kw.

42. Q. The efficiency of the pumping generation cycle will have an important effect on the economics and profitability of the combined project. Was this studied? A. Yes, and Mr. Chantrill in his testimony summarizes in Table

[1897-1899]

SUBSCRIBED AND SWORN to before me this 25th day
of February, 1966.

/s/ Louise I. Nylander

NOTARY PUBLIC in and for the
State of Colorado, residing at
Denver, Colorado
My Commission Expires May 17,
1969.

[1898]

TESTIMONY BEFORE FEDERAL
POWER COMMISSION
PROJECT 2289
ROCKY MOUNTAIN POWER CO.

by

John S. Cotton

1. Q. Will you please state your name and address for
the record? A. John S. Cotton. My home address is 24
Evergreen Drive, Kentfield, California.

2. Q. Will you please state your occupation? A. Con-
sulting engineer.

3. Q. Will you please state briefly your education? A.
I received a Bachelor of Science degree in Civil & Mechani-
cal Engineering from Heald College in 1924 and received a
Master of Science degree in Civil Engineering in 1936. In
addition, I completed a course in A. C. Electrical Engineer-
ing from University of California.

4. Q. Are you a registered professional engineer and,
if so, in what state?

[1899]

A. Yes, I hold professional engineer registrations in the
State of California in the following categories; Civil, Struc-
tural, Mechanical, Electrical. I also hold a Certificate of
Qualification from the National Bureau of Engineering
Registration.

[1899-1900]

5. Q. Of what engineering societies are you a member?

A. Fellow, American Society of Civil Engineers. Member, American Society of Mechanical Engineers. Member, American Institute of Electrical & Electronic Engineers. Life member, American Geophysical Union of National Research Council.

6. Q. I now hand you Exhibit 100-15 titled, "Professional Record-John S. Cotton" and ask if this exhibit was prepared under your direction? A. Yes, it was.

7. Q. Please describe Exhibit 100-15. A. This exhibit shows my experience record, including a detailed description of my work as a consultant starting in March 1948. It also contains a record of my education, engineering membership, registrations, technical papers and inventions.

[1900]

8. Q. What has been your association with this project?

A. I first became associated with this project in 1961, when I assisted in the preparation of an engineering & economic feasibility report on this project. On February 13, 1966 I started my engagement as consultant for Rocky Mountain Power Co.

9. Q. In your opinion is the project properly planned?

A. I have reviewed the planning of all stages of the development and cannot find how it can be improved. The sequence of the stages are logical. The planning takes full economic advantage of water head resources as well as the low cost fuels located nearby. The scheme of development minimizes investment at any given time and develops the resources to maximum economic extent. The use of tunnels and underground hydro-pumping plants minimizes marring the landscape and the reservoirs will greatly improve the recreational possibilities of the region.

10. Q. What is your opinion about the design of the development? A. I have reviewed the designs of all of the items of all stages of development and find that they are practical, safe, represent modern engineering practices, and are economical, taking into

[1901-1902]

[1901]

account the terrain, altitude, access, maintenance and weather conditions.

11. Q. I now hand you Exhibit 100-16, titled "Analysis of Mountain-Midwest Power Pool", and ask if this exhibit was prepared by you? A. Yes, it was.

12. Q. Please describe Exhibit 100-16. A. This exhibit is an analysis prepared by me to determine the desirability of pumped storage in the system. This was done for three stages of development by comparing a full steam generation supply to the system in lieu of pumped storage generation plus steam generation as planned. Two comparisons were made, one based upon nominal installed pumped-storage capacity and the other upon peak pumped-storage capacity.

13. Q. What are the results of this analysis? A. The analysis shows that the development as planned, employing pumped storage (on installed basis) will deliver firm power to the purchaser at a cost 12 percent to 19 percent less than for all steam generation. The other analysis (based upon peak pumped storage basis) shows that the development as planned

[1902]

will deliver firm power to the consumer at a cost 16 percent to 22 percent less than for all steam generation. Therefore, pumped storage is highly desirable in this system.

14. Q. I now hand you Exhibit 100-17, entitled "Comparison Of Purchased Mountain-Midwest Pool Power Delivered To Nebraska vs. Power Generated At Columbus, Nebraska," and ask if this exhibit was prepared by you? A. Yes, it was.

15. Q. Please describe Exhibit 100-17. A. This exhibit is an analysis (for several stages) prepared by me to determine the desirability of the system as planned compared to an equivalent steam system supplying the Nebraska and Kansas loads but having the steam generation located at Columbus, Nebraska. In order to obtain comparable systems,

[1902-1904]

transmission from Columbus back across Nebraska was also included in the all-steam system. The same unit capital costs of steam plants, transmission lines and switching stations were used in both systems. The rate for the system as planned is \$12.50 per kilowatt per annum delivered, plus 2.1 mills per kilowatt-hour

[1903]

delivered plus 1.0 mill per kilowatt-hour for transmission. This rate includes 5.5 percent cost of money, except for transmission which is 2.35 percent. Federal, State and local taxes are included.

The annual cost of the all steam Nebraska system is based upon 4 percent (also 5.5 percent) cost of money, except for transmission which is 2 percent. Very little taxes are included. The cost of coal delivered to Columbus, Nebraska, amounting to 28.5 cents per million B. T. U., was used in the all steam system.

16. Q. What are the results of this analysis based upon 60 percent annual load factor? A. The analysis shows that the cost of firm power delivered by the system as planned for 60 percent annual load factor, would be 40 percent to 6 percent (depending upon the stage of development) less than for a system having all steam power production located at Columbus, the average being about 23 percent less over the period of development. The above percentages are based upon all steam system money costing 4 percent and 2 percent. Similar percentages, based upon money for the all steam costing 5.5 percent and 2 percent, are 52 percent to 13 percent, the average being about 32 percent less over the period of development.

[1904]

Percentages for 55 percent annual load factor are quite similar.

17. Q. What are the principal reasons for the lower cost of power delivered from the system as planned. A. The primary reasons are that,

[1904-1905]

- (1) The cost of fuel is about twice as much at Columbus compared to Oak Creek.
- (2) The system as planned has the advantage of pumped storage plants.

18. Q. Have you reviewed the various cost estimates of the various states of development? A. Yes, I have.

19. Q. In your opinion are these costs realistic? A. Yes. The cost estimates for this development are unique in that about 90 percent of the direct costs are backed up by firm contracts. This is unusual.

20. Q. Have you examined the construction specifications and contract documents for this development? A. Yes, I have.

[1905]

21. Q. What is your opinion of these documents? A. In my opinion these specifications and contract documents are fair, realistic and practical.

22. Q. Have you investigated the possible leakage problem at Sweetwater dam? A. Yes, I visited the site on February 20, 1966 and have reviewed the explanatory and test data.

23. Q. What is your opinion in this matter? A. There is a possibility that leakage will occur through the glacial moraine. However, leakage is not important provided that,

- (1) The leakage does not exceed the mandatory releases.
- (2) The velocity of leakage is not great enough to remove materials from the moraine. Further tests should be made by observing test wells or pits or by making observations during filling of the reservoir. If it is decided that the leakage should be stopped or curtailed, there are several approaches to rectification. One method would be to:

- a. Smooth the upstream face of the moraine.

[1905-1907]

- b. Apply a rolled blanket of lake bottom material. (this would require partial drying of the blanket material).

[1906]

- c. Apply a graded filter to the blanket.
- d. Cover filter with riprap.

Another method would be to:

- Excavate upstream face of moraine and pass the material through screens to separate fines, filter materials and riprap.
- Roll the fines into a blanket.
- Apply filter materials.
- Apply riprap.

The contingency cost item is sufficiently large to include such treatment, if required.

[1907]

AFFIDAVIT

STATE OF COLORADO)
)
CITY AND COUNTY OF DENVER)

John S. Cotton, affiant, having been first duly sworn, deposes and says:

That he has read the foregoing testimony and if asked the questions therein his answers in response would be as shown:

That the facts contained in said answers are true to the best of his knowledge and belief; and

That he hereby adopts these answers as his own.

/s/ John S. Cotton

[1907, 1924-1925]

SUBSCRIBED AND SWORN to before me this 25th day
of February, 1966.

/s/ Louise I. Nylander

NOTARY PUBLIC in and for
the State of Colorado, residing
at Denver, Colorado

My Commission Expires May 17,
1969.

[1924]

TESTIMONY BEFORE THE FEDERAL
POWER COMMISSION
PROJECT NO. 2289 - COLORADO
ROCKY MOUNTAIN POWER CO.

By

R. L. Chantrill

1. Q. Will you state your full name and address, please?
A. Ralph Lohbeck Chantrill. My business address is 275
University Boulevard, Denver, Colorado.

2. Q. What is your educational background? A. I have
a Bachelor of Science degree in Engineering, with Honours,
from the University of London, received in 1923, and this
covered Civil, Mechanical, Electrical and Hydraulic Engineer-
ing.

Q. I now hand you Exhibit 100-21 consisting of sheet
titled "Experience Record - Ralph Lohbeck Chantrill," and
ask if this exhibit was prepared under your direction. A.
It was.

4. Q. Please describe Exhibit 100-21. A. Exhibit 100-
21 shows my academic background, my

[1925]

membership in professional organizations and a chronolo-
gical summary of my experience.

[1925-1926]

5. Q. What is your present position? A. I am a consulting engineer.

6. Q. What has been your relationship to the engineering of Project 2289? A. I have been associated with Project 2289 since 1960, and in the past 18 months have directed the engineering, planning and design of the pumped-storage feature and its operation.

7. Q. In discharging these assignments, did you familiarize yourself with the area involved? A. Yes. I studied the available U.S. Geological Survey Maps, U.S. Bureau of Reclamation maps, and I have paid many visits to the area to inspect the ground on foot, in a jeep, and in a helicopter.

8. Q. This Project will form part of a mountain mid-west power pool. Please review the advantages of a pool.

A. As the word implies, pool means the pooling of the generation and transmission resources to secure

[1926]

operationally the maximum economic and capital investment advantages:

(a) Firstly for the individual components or utilities.

(b) Secondly, collectively as a whole.

In particular, a pool comprising both hydro and thermal generation makes it possible for the capital investment to be allocated so that in operation each type of plant can be operated to secure the lowest costs, which should and must be passed to the ultimate consumer. The Pacific Northwest Coordination Agreement is a typical example of a pool, and the simple basic purpose is the same in the Mountain Midwest Power Pool, namely (from National Power Survey of the Federal Power Commission, p. 30):

"To provide for operation of all the power facilities of the region with maximum efficiency and to make provision for an equitable sharing of the benefits of coordination."

9. Q. In planning the concept of a mountain midwest power pool, was it intended to confine these benefits of co-

[1926-1928]

ordinated operation to the initial members only? A. Certainly not. The fuel resources of the region are so vast, and when these are considered in relation to the quite unequalled pumped storage peaking potential made

[1927]

possible by the topography, it is impossible to confine such benefits to a restricted membership.

10. Q. Please describe the proposed mountain midwest power pool. A. The mountain midwest power pool comprises:

- (a) A thermal mine-mouth station to be built by Oak Creek Power Co., and designed to operate not only on the base of the load, but for prolonged periods at almost constant load, and fulfills three separate sets of criteria of the National Power Survey.

- i. From Page 4 of Vol. I.

- “A good steam plant site requires a location near the fuel source or market or both, access to plentiful supplies of condensing water, access to transportation, freedom from flood threat, favourable geological conditions, a large tract of land available at moderate cost, and other site advantages. A site which meets all these criteria should be put to maximum economic use for the benefit of the largest area it can serve.”

- ii. From P. 119 of Volume I.

- “Most of the new steam-electric generation will be in large high-efficiency baseload units which are

[1928]

not designed for flexible peaking service. These units cannot be placed on or taken off the line quickly. They require warming up and cooling down at carefully controlled rates in order to protect pressure parts and rotating elements from excessive thermal stresses and uneven expansion. Large, conventional baseload units are most effi-

[1928-1930]

cient when operated at or near design rating. Their efficiency drops as the unit output decreases, and a substantial reduction in efficiency may occur when the output is reduced below about 50% of a unit's design rating. These units will, therefore, be utilized for baseload operation during a greater part of their lifetime."

iii. From National Power Survey, P. 2.

"Steam generating plants can be located in relatively remote areas with the resulting alleviation of air pollution in metropolitan centers."

(b) A pumped storage hydro peaking plant to be built by Rocky Mountain Power Co., the subject of the present application before the Commission, and one which meets the following six criteria:

i. (National Power Survey, P. 123) High head, a more

[1930]

than favourable terrain and abundant water to ensure high capacity.

ii. (National Power Survey, P. 123). Only 42 miles from the baseload minemouth thermal plant to be built at Oak Creek, and within a radius of some 60 miles almost limitless deposits of coal and oil shale.

iii. Terrain which makes possible having higher and lower pools both of adequate capacity to allow power for pumping to be absorbed not just nightly for five days out of a week, but also right through a weekend - a 7 day pumping cycle.

iv. Terrain, and adequate water availability to allow construction in economic stages of about 200 MW initially, with a potential of more than 3,000 MW.

v. (Extract from National Power Survey, P. 117):

"Because of their ability to start quickly and make

[1930-1932]

rapid changes in power output, they are particularly well adapted for serving peak loads and for assisting in the supply of spinning reserves."

- vi. Storage and controlled releases of the waters of the upper reaches of the Colorado Basin, which can

[1931]

only be an additional benefit to the downstream users.

- (c) EHV transmission lines to be built by East-West Intertie Inc., to serve the double purposes of interconnecting the pumped storage Sweetwater plant with the base load thermal plant at Oak Creek, and of transmitting the power at 500 kV to the publically owned utilities in Nebraska, Wyoming and the adjoining States. By the very nature of the design of this system, the lines can be extended west and southwest to provide, through interconnections, the benefits of a 7-day pumped storage peaking facility for the thermal plants in those neighbouring States. This 500 kV EHV transmission system meets three criteria of the National Power Survey.

- i. From National Power Survey, P. 7.

"There are many collateral benefits of a co-ordinated power supply system with a strong transmission grid integrating the facilities over large areas."

- ii. Fig. 116 of the National Power Survey, the East-West transmission line can be extended west from the combination of the mine-mouth thermal plant

[1932]

and hydro peaking as shown in the figure.

- iii. The six functions defined in the National Power Survey for an acceptable transmission system, pages 212 & 213.

[1932-1933]

Also the further criterion, that this transmission can be constructed in economical and technically prudent and acceptable stages.

11. Q. You claim the various criteria set out as guide lines in the National Power Survey have been complied with. In respect of points enumerated in your quotation from page 4, Volume 1, of the National Power Survey, please review how these apply to Oak Creek Thermal Plant. A. I propose dealing with the various points in the order in which they are quoted in the Survey:

1. *Near a Fuel Source.* The site is what is known as a minemouth station, which can be supplied with open-cast strip mined coal of good quality from a proven reserve of at least 40,000,000 tons. Within a radius of some 10-12 miles the reserves are more than adequate to meet the requirements of fuel for a plant rated at 1,800 megawatts for the life of the plant operating on the base of the load. Other testimony deals more fully with available supplies.

[1933]

2. *Near a Market.* This consideration does not arise as a restriction when 500 kilovolts is adopted for transmission to the major load center in Eastern Nebraska, because the load is large enough in its growth to make this transmission most economical.
3. *Access to Plentiful Supplies of Cooling Water.* The proposed site for the Plant is in the valley of Trout Creek, which is some 4 miles west of Oak Creek and in the valley next to and west of the Yampa River. From the U.S. Geological Survey Surface Water Records, it has been possible to assess the average supplies of water available:

[1933] 1934]

Stream	Average Annual Supplies in Acre Feet		
	Gross	Estimated Downstream Rights	Net Available
Trout Creek	29,000	19,000	10,000
Yampa at Oak Creek	60,000		
Morrison Creek at confluence with Yampa River	92,000	90,000	120,000
Service Creek at confluence with Yampa River	58,000		

From the projected pumping plant on the Yampa River to the site of Oak Creek Power Plant will involve a

[1934]

pipeline of 10½ miles. It has been estimated that the total annual volume of water required for condensing water make-up, boiler make-up, services at the plant, and a small residential colony will be 5,000 acre feet for each 300,000 KW unit. On the basis of the above supplies the cooling water available would be adequate for a plant with an installed capacity of 4,000 MW or more.

4. *Access to Transportation.* A branch of the Denver Rio Grande Western Railroad runs north through Oak Creek up the valley to the east of Trout Creek and on to Steamboat Springs, and thereafter the railroad turns west to follow the Yampa Valley, through Milner as far as Craig. A siding will be constructed either from Milner south up Trout Creek to the site, or from Oak Creek sidings over the saddle to Trout Creek and the site.

Colorado State Highway 131 runs north through Oak Creek to join, just south of Steamboat Springs,

[1934-1936]

Interstate Highway 40 from Denver over Rabbit's Ears Pass to Craig and the West. At present there is a good road with a proper formation from Oak Creek township over the saddle to Trout Creek and the power plant

[1935]

site. The small section of road in Trout Creek Valley to the site will require grading, a formation for heavy loads, and paving.

The site has excellent access to transportation and the heaviest possible load can be brought to the site either by road or rail.

5. *Freedom from Flood.* Trout Creek Valley drains a relatively small area of the northeastern slopes of the Flat Tops. With the prevailing moisture-laden winds being generally from the west, possibly with a touch of south, heavy precipitation is most unlikely, and with the power house site some 20 feet above the maximum reservoir level, even a flash flood cannot result in flooding of the site. The reservoir will be provided with a spillway at elevation 7,265, and the spillway will have a rating of 900 c.f.s. On the eastern side the mountain rises slowly to the ridge which separates Trout Creek from Oak Creek with adequate natural drainage. There is no possibility of floods at the site.
6. *Favourable Geological Conditions.* The rock formation on which the power plant will be built is a stratum of

[1936]

limestone immediately under the coal seam. The coal has been removed from the site by opencast mining, and previously stripped overburden covers the area. The rock formation, being a siliceous limestone, is excellent and can be loaded with complete safety for the weights of plant to be erected.

[1936-1937]

It is proposed to use the stripped overburden for Zones 2 and 3 material of the dam for the reservoir, which is required for storing the water for make-up and all other purposes. Clay material for Zone 1 for the impervious core is available on the site on the sides of the valley. There is little material which will have to be brought any distance. It would be difficult to find a better site as regards geological conditions for the plant.

7. *Large Tract of Land.* There is plenty of land available in the vicinity of the power plant site. It is mostly scrub, although the bottom of Trout Creek Valley is good grazing land.
8. *Continuous Operation at or Near Design Ratings.* In selecting the size of unit it was necessary to choose as large a rating as possible, even for the initial stage, to secure both the lower inherent heat rate and lower

[1937]

capital investment per kilowatt of rating, and at the same time have the initial sets small enough rating to allow them to be operated for prolonged periods at or near design ratings.

With 300 MW as the maximum continuous rating of a unit, and with the hydro facilities available at Sweetwater, it is not expected that any steam unit will have to operate much below 65 percent of its design rating for any length of time. Thus the choice of rating in relation to the loads to be supplied and operated in conjunction with a pumped storage peaking plant designed for a 7-day cycle, shows that the criteria on page 119 of the National Power Survey have been met.

9. *Air and Stream Pollution.*

Firstly, this station is situated in an area remote from any city, but it is in the mountains of the Rockies. To preserve the beauty of the countryside, electro-

[1937-1939]

static dust precipitators will be installed to remove 99 percent of the dust from the flue gases.

Secondly, the sulphur content of the fuel at about 0.6 percent is almost the lowest in the U.S.A. and the exhaust plume should not present any problems of

[1938]

air or soil pollution due to sulphur products.

Thirdly, the country to the leeward side and to the east of the plant is mainly scrub with hardly any agricultural land or valuable forests or lakes.

Fourthly, make-up water will be drawn from Trout Creek and the Yampa River, and will be consumed by evaporation. The other water used for ash handling and dust collection will be re-used from settling tanks, while a sewage plant or septic tanks will deal with sewage and domestic effluent.

Thus neither the air, nor the countryside, nor the streams will be affected by pollution, although the station is sited away in the mountains.

12. Q. Please enlarge on the special features you had mentioned earlier with regard to the Sweetwater pumped storage project, and first describe the terrain. A. The terrain is quite unique in that a main storage reservoir can be provided to store the snow-melt just outside the Wilderness Area, to serve two pumped storage hydro plants each having a mean operating head of 1,350 feet. (A panoramic sketch shows the layout, see Exhibit 100-22). This reservoir has been designed for a maximum water

]1939]

surface level of 9,280 feet.

The Sweetwater pumped storage plant east of the main reservoir will be connected with the Sweetwater forebay by a tunnel system $7\frac{1}{4}$ miles long, while the lower pond or afterbay will be Sweetwater Lake with the reservoir capacity

[1939-1940]

increased by a small dam constructed at the outlet of the lake. This pumped storage plant is known as Sweetwater.

The Lost Solar pumped storage plant west of the main Meadows reservoir will be connected by a tunnel $5\frac{1}{2}$ miles long with a forebay reservoir created by a dam in Lost Solar Creek; the lower pond or afterbay will be created by a reservoir in the South Fork of the White River. There are three excellent possibilities, namely:

1. A dam 125 feet high and 1500 feet long just downstream of the confluence of the Lost Solar Creek with the South Fork with a usable capacity of 9,680 acre feet.
2. A dam 235 feet high and 1,100 feet long on the South Fork about halfway between the Lost Solar Creek and the Head of the Canyon, with a reservoir usable capacity of 41,000 acre feet.
3. A dam 320 feet high and 1,400 feet long on the South

[1940]

Fork at the mouth of the Canyon, with a reservoir usable capacity of 107,000 acre feet. By raising this dam 40 feet the capacity can be increased to about 140,000 acre feet.

13. Q. What critical analysis has been made of the available water supplies and the control of these water supplies?

A. Water supplies have been covered by Hydrology Exhibit 100 - 20 which has been referred to in other testimony.

14. Q. What does hydrology show in particular? A. It demonstrates more particularly the relationship between the minimum discharge or run-off and the mean and maximum, firstly during the three months of the snow melt, and secondly during the remaining nine months, as given in the table below, using the minimum as unity in each case:

[1941-1942]

[1941]

Run-off Ratios based on 60
years of records

Drainage Area	Snow Melt			Remaining 9 months		
	Max.	Mean	Min.	Max.	Mean	Min.
1. South Fork above Meadows Dam	5.75	3.6	1.0	1.35	1.16	1.0
2. Meadows Dam with Waggonwheel & Patterson	5.75	3.6	1.0	1.35	1.16	1.0
3. South Fork down to Afterbay Res. of L. Solar	5.75	3.6	1.0	1.35	1.16	1.0
4. Sweetwater only	5.9	3.5	1.0	1.4	1.15	1.0
5. Sweetwater including Deep & Heart Lakes	5.9	3.5	1.0	1.4	1.15	1.0

15. Q. And is this table of any assistance? A. It is of great assistance because it shows that during the nine months August through April there is not a great deal of difference in the run-off between the driest year on record, the mean, and the maximum. However, during the three months of the snow-melt, the ratios are quite appreciable. Therefore with an annual snow survey it becomes possible to plan well in advance the best means to be adopted for conserving water if the survey shows a poor snow pack, and on the other hand the best means to be adopted for all storage reservoirs

[1942]

to store the run-off if the survey shows a heavy snow pack.

16. Q. This suggests control of water supplies, has this received study and consideration. A. Yes, I now hand you Exhibit 100-23 entitled "Planned use of reservoirs and tunnels."

[1942-1943]

17. Q. In what manner does this study assist the project? A. It shows that for purposes of conservation of water and more particularly taking water into storage to meet deficits in any future dry year, the storage of the water - and this may include pumping - is spread over a few weeks only of the three months of April, May and June.

18. Q. Why do you mention pumping? A. The variation of the load demand shows that December is the month of maximum demand in the submontaine and more northerly States, and August has the maximum demand for the plains, but in both cases the period of minimum demand is April-May, with demand beginning to rise for air conditioning, pumping, irrigation in the month of June. This means that the region will have spare generating capacity available in April and May for pumping

[1943]

the run-off to higher reservoirs for storage.

19. Q. What kind of storage? A. This can be storage for release before the next snow-melt in an average year, or for long-term carry-over storage in a wet year for use perhaps some years hence in a dry year. With a generation pumping cycle efficiency of about 73% most of the energy used for pumping the water for either short term or long term storage will be recovered when water is released from storage.

20. Q. Of what advantage is this storage? A. There are two advantages:

1. It allows appreciable savings in water collection works, and of the annual costs of maintenance of such works, because the water can be drawn and pumped from the lower or afterbay reservoir for storage in a higher one.
2. To make possible a 7-day pumping cycle it is essential that there be adequate reservoir capacities and that they be used to maximum advantage.

21. Q. Please explain your second point. A. Exhibit 100-22 shows the layout of the various reservoirs and inter-connecting tunnels and pipe lines. Normally,

[1944-1945]

[1944]

the pumping cycle will consist of the daily interchange of water between the forebay and the afterbay. Now if there is a greater reservoir available in which long period storage is possible, water can be drawn from such a reservoir and returned over the weekend, Saturday and Sunday, when many pumped storage schemes cannot provide the reservoir capacity for a week end pumping load. In the case of the present project, this storage will be provided in the main by Meadows Reservoir, and possibly also to a lesser extent by the afterbay reservoir in the South Fork.

22. Q. Why do you consider it is desirable to provide a pumping load during the weekend? A. The National Power Survey, page 120, possibly over-simplifies the problem of operating the very large steam sets:

"They require warming up and cooling down at carefully controlled rates in order to protect pressure parts and rotating elements from excessive thermal stresses and uneven expansion."

With the larger, more efficient thermal sets a plant operator will use every strategem to keep them running, possibly by off-loading the older sets. But even off-loading

[1945]

the older sets means appreciable waste of not only heat but operating personnel, and both are very costly. If it is the conclusion of the power industry that nightly off-peak pumping is desirable for filling the trough in the output of the large sets, this becomes even more necessary, if not vital, during weekends.

But reservoir capacity is essential and the plant must be designed and built to include this operating duty.

In many pumped-storage projects it has been found necessary to create artificially the terrain to ensure that either the upper or lower reservoir has adequate capacity, and in such cases it becomes economically prohibitive to provide capacity for weekend pumping, or pumping during the snow-melt for longterm storage.

[1945-1947]

23. Q. Do you consider the same applies to nuclear power plants? A. It is significant that Britain, the country with the largest aggregate capacity of nuclear power plants in actual commercial operation has found it necessary not only to build large pumped storage plants, but even to convert by reconstruction a pure hydro peaking plant on the banks of Loch Lomond into a pumped storage plant, and build two new pumped storage plants in Southern England using sea water; these three stations now under construction

[1946]

are planned to have a generating peaking capability of about 1,200 megawatts each.

24. Q. Does this tendency apply to Britain only? A. No, there are some very large plants under construction in U.S.A., Germany, Luxemburg, Switzerland, and other countries in Europe, also the Snowy Mountains, N.S.W., Australia.

25. Q. How has this feature been provided in the present project? A. Exhibit 100-22 shows the general layout of the project, while the tables in Exhibit 100-23 show the reservoir capacities and characteristics.

26. Q. How do you plan to use all these reservoirs for the three-fold function of daily cycle, 7-day cycle, and conservation of a portion of the snowmelt for storage? A. The 7-day cycle is a balance between (a) the daily exchange of water between upper and lower reservoir, (b) the weekly releases downstream, and (c) the additional water drawn from main storage which must be returned during the week-end.

The pumping into storage of the spring snow-melt fortunately presents no problem because it will coincide

[1947]

with the annual period of low load.

This has been dealt with in great detail in Exhibit 100-23, Planned Use of Reservoirs and Tunnels.

27. Q. Do you consider the pumping of snowmelt into storage will present any problem? A. The very high peak

[1947-1948]

net inflows should never have to be pumped into storage, because they occur only on certain occasions after a heavy snow pack, and therefore capacity in the reservoirs, even in the afterbays, can be planned in advance and made available in both Sweetwater and Lost Solar plants. As this pumping duty can be planned for April and May when the system load is not a maximum, even pumping 600 acre feet per day into Meadows Reservoir from Sweetwater presents no problems.

28. Q. Will the plant to be installed be suitable for this pumping duty? A. Yes. In the case of Sweetwater there will be no problem in pumping the water from Sweetwater Lake into the forebay, and a separate small underground pump-house will draw the water from the forebay for delivery into Meadows Reservoir.

[1948]

The designed performance of this pumping plant is described in Table XVII of Exhibit 100-23.

In the case of Lost Solar, the terrain has made it possible to design the hydraulic layout so that the water can be pumped direct back to Meadows by the reversible units to be installed. The designed performance is described in Exhibit 100-23, Table XVIII.

29. Q. Has any study been made of reservoir capacities in relation to the discharges? A. Yes, and more specifically to the performance of the plant firstly as a pump storage unit, and secondly for the storage of the water to meet releases for consumptive use even in a critically dry year.

30. Q. Is long-term storage vital for the pumped storage feature? A. No.

31. Q. Why did you consider it necessary to investigate long-term storage. A. Reservoir Capacity becomes essential for three purposes:

1. To conserve the waters of the Upper Colorado Basin for beneficial and consumptive use of the area and to study

[1949-1950]

[1949]

the possibility of recreational facilities which experience has shown always become associated with a lake or reservoir.

2. To store the runoff so that the releases for consumptive use can be constant, a condition which becomes very necessary for water sales.
3. To provide for the Pool and the region emergency generation capacity, which would be always available at instant call. A reservoir capacity of 45,000 acre feet in the afterbay of the Lost Solar plant would provide 300,000 kilowatts for seven days at 100 percent load factor, and the whole of this capacity could be made available for the system in under one minute. No other form or kind of plant can produce this kind of emergency generation capacity.

32. Q. Why do you consider the third point deserved any special consideration. A. Colorado has the unique combination of vast resources of fossil fuels and the site for a pumped storage peaking facility of almost limitless capacity with assured water. With the growth of electrical load, which is inevitable with a rising standard of living, demanding an ever-

[1950]

increasing source of power and energy, it becomes essential that the concept of the development of these resources provides for the consumer the assurance of continuing low cost power. This low cost power can be secured by the prudent and realistic and unprejudiced approach to a combination of water resources with fossil fuel deposits.

33. Q. Has the extent of the application of pumped storage been studied in relation to the load projections? A. In other testimony the load deficiencies, and more particularly the gross load demands have been given. Using the projected firm load demands for the month of August for the summated Nebraska utilities together with the Sun-

[1950-1952]

flower, Central Kansas, Wheatland and Pioneer Cooperatives in Kansas, and the Black Hills Power and Light Company, a probable weekly load shape has been evaluated. This load shape is based on hourly demands as recorded in 1964 for the month of August for Eastern Nebraska, and adjusted for the projected peak demands in 1975 and 1980 respectively. These load shapes are given in the following Exhibits which I now hand you:

Exhibit 100-26. Load shape for one week of August 1975 for the summated Nebraska utilities, with the

[1951]

addition of Sunflower, Central Kansas, Wheatland Pioneer Co-operatives and Black Hills Power and Light Company.

Exhibit 100-27. Load shape for one week of August, 1980 for the summated Nebraska utilities with the addition of Sunflower, Central Kansas, Wheatland and Pioneer Co-operatives and Black Hills Power and Light Company.

34. Q. Have you made any deductions from these weekly load shapes? A. Yes. If the load shapes are a reasonable projection for the particular week of August in the future, then to secure optimum economy in thermal generation, a substantial pumped storage capacity will be required even in 1975.

35. Q. Exactly what do you mean by substantial capacity? A. Exhibit 100-26 for 1975 indicates that the weekly generation from the pumped storage facilities for August could amount to 37,000 megawatt-hours, and the pumping load to about 50,000 megawatt-hours per week. This would be required to allow the high heat economy thermal generation to operate at a steady load of 2,250 megawatts.

[1952]

36. Q. Can these amounts of generation and pumped storage be provided by 1975? A. Yes, but even in 1975 if these peak conditions of load are to be met, the capability of Sweetwater with Lost Solar could require extension, if the whole of the system peak were carried by Sweetwater and Lost Solar.

[1952-1953]

37. Q. Why would extension be required? A. The weekly generation and pumping of Sweetwater and Lost Solar under the most favourable circumstances with 600 megawatts of plant in each station has been abstracted from Tables XVII and XVIII of Exhibit 100-23 and given below:

Name of Plant	Peak Weekly Generation		Average Weekly
	MW	Mean MW-Hours	Pumping MW-Hours.
Sweetwater	600	27,000	37,000
Lost Solar	600	24,000	32,000
Total	1,200	51,000	69,000

These totals require comparison with the projected load demand of 1,200 megawatts and load shape of Exhibit 100-26, and the deduced weekly generation of 37,000 megawatt hours and weekly pumping of 50,000 megawatt-

[1953]

in all cases duly corrected for system transmission losses.

38. Q. Can this be provided, if required? A. Yes, by the addition of more units or by the installation of larger units in Stage III of the project.

39. Q. Why would these units be required? A. To meet peak generation demand and the peak pumping demand, and to provide the weekly generation required to maintain the cycle efficiency as high as possible.

40. Q. Now what about the projections for 1980? A. To increase the weekly generation the capacity of Lost Solar would have to be increased probably by the addition of further generating units in Lost Solar because the peak load demand is 1,500 megawatts and a peak pumping demand of 1,600 megawatts without adjustments for transmission losses.

[1953-1955]

41. Q. Can this be done? A. Yes, it can be done at Lost Solar with its large afterbay reservoir, but would be difficult with Sweetwater because of the small capacity of Sweetwater afterbay.

[1954]

42. Q. Would such expansion detract from the beauty or recreational amenities of the area? A. No.

43. Q. Why not? A. Because most of this work would be underground, and the surrounding country would be left virtually undisturbed.

44. Q. Have you any further comments to make with respect to pumped storage? A. Yes, three comments:

1. Operational experience throughout the world, acquired by systems having pumped storage generation has proven the advantages to be secured for the system by having such spinning plant always available.
2. This feature will provide for the whole region, and such utilities of the neighbouring States as are connected into the transmission system of the Pool, instantaneously available emergency generating capability and equally instantaneously available reactive power.
3. With the topography, the terrain, and availability of water, this facility should not be denied the interconnected

[1955]

system, whose consumers expect, and have the right to demand, continuity in the supply of electrical energy.

45. Q. It would appear that this project involves a combination of possibly novel techniques in both the hydraulic side and the electrical side of each unit. Please describe firstly what steps have been taken with the development and design of these large high head reversible pump-turbine units. A. There are a number of installations in Europe with high head Reaction turbines of the Francis type in suc-

[1955-1956]

cessful operation. These turbines were developed through research mainly in the mechanical hydraulic research laboratories in Sweden, Britain, Germany and Switzerland. The development of a single stage pump for these high heads was a natural process of evolution in these laboratories. Thus operating experience kept in step with research and development. Many problems of geometric shapes and proportions became evident when operational difficulties and even failures of components were not paralleled in the model tests in one of the many research laboratories in Europe. It is indeed fortunate that the Sweetwater installation has an almost identical parallel in Cruachan in Scotland. This will mean that any problems which may

[1956]

arise consequent on the disparity of geometric shapes and proportions will have been explored and a satisfactory solution found, and operating experience acquired before Sweetwater becomes operational.

46. Q. Have you any doubts or reservations? A. None at all. I am conscious that any new development must expect teething problems. There may be some with Sweetwater, but I repeat someone else will provide the proving ground, not Rocky Mountain Power Company.

47. Q. Would you care to comment on the electrical end of each unit? A. The pioneering and development of the design of generators driven by waterwheels with technical characteristics to permit them to feed long transmission lines was done over 35 years ago. This became a necessity in the developing countries who could not afford the more sophisticated equipment of the industrialized nations. Economics of the supply of energy within the limits of purchasing ability forced this development. Over the past 35 years there have been many electrical machines built and installed with these characteristics, each being a development from a previous model. For Sweetwater, the reversible generator-motors

[1957-1958]

[1957]

will have the operating parameters shown on the operational chart in Exhibit 100-24.

48. Q. How can the reactive power be made available?

A. As generators, the machines can operate within their limits of operational stability when carrying their full rated Megavoltamperes at almost zero power factor leading, and momentarily slightly more at 110 percent of normal volts. This means that when six machines are installed, the station can accept 600 megavoltamps, at zero power factor leading when switching the long high-voltage lines, and when the four machines are installed in Lost Solar this will be increased to 1000 MVA.

Running as motors, they can operate continuously as synchronous condensers by depressing the water level in the runner chamber with compressed air so that the runner spins in air. Under these conditions, the output of the machine as a condenser will be greater with a lagging power factor-under excited-than fully excited and at a leading power factor. This means that with six machines running there will be 600 megavoltamperes of lagging power available to neutralise a like amount of leading kilovoltamperes from the transmission lines.

[1958]

49. Q. Cannot the generators at Oak Creek make a similar contribution? A. The generators at Oak Creek are high speed - 3,600 revolutions per minute - solid rotor machines, and therefore have an inherent limit of maximum leading reactive kilovoltamperes which they can accept at zero power factor. For the Oak Creek generators this is 45 percent of rating or 135 megavoltamperes continuously. However, a steam turbine cannot operate, except for very short periods, virtually unloaded, and the light load operation usually should not be less than 20 - 30 percent of rating for any prolonged periods. From this it follows that there are many hazards to be taken care of when energising the long transmission lines from a thermal station. With Sweetwater

[1958-1960]

only 42 transmission miles away, the hazards mentioned above should be reduced greatly. Without Sweetwater the high voltage lines would require shunt compensation to give almost 100 percent compensation for capacitance and line charging with switchgear to reduce this compensation as the load builds up, a costly procedure. The operating parameters are given in Exhibit 100-25.

50. Q. Why should it be necessary to reduce this shunt compensation as the load builds up?

[1959]

A. Because shunt capacitance usually is necessary for regulation of transmission lines, especially as the load builds up.

51. Q. Would you care to amplify? A. In the application and design of the complete plant and facilities there is nothing which has not been either proven in operation or will be proven before Sweetwater is commissioned, although many technical features may be new.

52. Q. You have dealt in great detail with the Sweetwater and Lost Solar facilities as such, but are they not associated very closely with the basic concept of the thermal plant to be built at Oak Creek? A. Yes they are. In the present case the close proximity of only 42 transmission miles will make operation more simple and easier because Sweetwater machines will be able to generate and absorb reactive power, thereby simplifying the operation of the large steam units at Oak Creek. This will be the case even more so at night, when the steam sets will be loaded by pumping demands, otherwise light load operation with the long transmission lines would have called for more shunt reactive compensation

[1960]

with a corresponding increase in capital investment and operational hazards.

53. Q. Please describe the Oak Creek plant. A. Reference should be made to Exhibit 100 - 10 which is the feasibility report on the station.

[1960-1961]

54. Q. Have there been any alterations or corrections?

A. Yes there are some. In the first place the cost schedule has been amended because firm contracts have been placed for the supply of all the equipment and for construction. These amended costs are dealt with in another testimony.

55. Q. Any amendments of a technical nature, and if so what are they? A. The main change is in the cooling towers, cooling water, coal and ash handling, the layout of the feed water heaters, de-aerator and the auxiliary supply system.

56. Q. What is the change in the cooling towers? A. Originally natural draft hyperbolic towers were envisaged. However, investigations into their possible use raised some doubts as to their suitability at the high elevation

[1961]

of Oak Creek, and more particularly the combination of extreme air dryness with some extremely low temperatures. The problems to be solved became quite numerous with relatively little experience to draw on. The towers now included will be induced draft with two speed fans, so that even in the very extreme conditions the air flow will not be reversed (except for de-icing) as could have been the case under certain extreme conditions with natural draft.

57. Q. What about the cooling water for the condensers?

A. This presents a small problem because the Fish and Game authorities will not allow this cooling water to be returned to the stream for fear of pollution. As a consequence the downstream holders of senior water rights will have to have adequate releases for their rights and because of the stream pollution scare these releases will have to be senior to storage of water. This means that the supplies available from Trout Creek could be substantially lower than deduced a year ago.

58. Q. With this uncertainty how can you proceed with this project? A. Water claims have been filed on the Yampa, and on Morrison

[1962-1963]

[1962]

Creek, and on Service Creek, all upstream of the gorge through which the Yampa flows into the open bowl of Steamboat Springs. Investigations show that it will be possible during the snowmelt season to divert sufficient water for storage to assure at least 50,000 to 75,000 acre feet consumption annually on a long term basis. To this end the filings claim a reservoir in the Yampa of 150,000 acre feet diversion into the Yampa reservoir of an average of 140,000 acre feet per annum total from Morrison Creek and from Service Creek, also a pipeline to convey the water from Yampa reservoir to Oak Creek plant.

59. Q. What is the change, if any, in the coal handling equipment? A. With the supply of coal assured from mine-mouth deliveries for the whole planned capacity of the station, it may be more advantageous and economically justifiable to install the main handling line and breakers for the planned ultimate capacity. This could mean carrying a larger capital commitment during the initial years.

60. Q. What are the changes, if any, in the ash handling equipment? A. Ash and fly ash in the quantities to be produced by Oak presents a problem of disposal. It is proposed to use

[1963]

water born transportation into a gulch or valley which could be filled up. As of this moment it may be more prudent to defer the decision on the ash disposal plant.

61. Q. How about the feed heaters and de-aerators? A. It has now been decided to locate these in a separate bay between the engine room and boiler house in order to provide a positive head on the suction of the boiler feed pumps, this has increased the building costs to some extent.

62. Q. In what respect have you considered it necessary to review the auxiliary supply system? A. The complete failure of the supply of electrical energy in the North Atlantic seaboard States naturally has led to a critical reappraisal of all the factors which are likely to contribute

[1963-1965]

to or adversely affect the continuity of supply of power and energy from this power plant.

63. Q. What were the conclusions of this re-appraisal?

A. There appeared to be three factors which could have contributed to the failure in the east.

1. Possibly inadequate control of reactive power for what is basically a dynamic system.

[1964]

2. The inability to operate the large sets truly on the base of the load.

3. Inadequate classification of the relative importance of auxiliary supplies to vital auxiliaries.

64. Q. Do you consider all these points have been taken care of? A. Yes. The first criterion is taken care of in the co-ordination of design and operational features between Sweetwater and Oak Creek, especially in respect of the control of and spinning availability of reactive power.

65. Q. In what other respect does co-ordination with Sweetwater affect the steam plant at Oak Creek? A. In one respect the operational criteria of Oak Creek are simplified because the units will run at or near design rating for long periods day and night, therefore the station can be conceived, designed, and built to operate on the base of the load. In another respect this requirement of prolonged operation on the base of the load demands careful study and assessment of the assurance of continuity in the auxiliary supplies in the station.

66. Q. Why should that be the case? A. Because Oak Creek operating on the base of the load, the

[1965]

availability of the main generating units should be always assured since the operation of the rest of the power plants is built up on that premise. This means that the supply of electrical energy to the auxiliaries must never be in doubt, and alternative sources of supply should be always available.

JA 172

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[1965-1966]

67. Q. Please describe briefly the arrangements. A. Each turbine generator unit will be provided with its own unit auxiliary transformer with two secondary windings to step the voltage down to 6900 volts for the auxiliaries of over 1000hp rating, and down to 2400 volts for the auxiliaries between 1000hp and 200hp. Both the 6900 volt unit switchboard and the 2400 volt unit switchboard will be interconnected with the corresponding boards of the adjoining units. In addition each unit switchboard will have a connection with the main station auxiliary transformer connected to the 230kv busbars which in turn will be interconnected through the Hayden steam plant with the 230kv system of the Bureau of Reclamation and also at 230kv with Sweetwater pumped storage plant. Thus even in the event of a total system shutdown supplies of power and energy will be readily and immediately available from other sources, more particularly hydro sources.

[1966]

In addition certain small but vital auxiliaries will be provided with DC drives, thus allowing them to be supplied from the station battery.

The basic connections for the AC auxiliary supply are shown in Exhibit 100 - 10, Drawing No. OC-P-5.

68. Q. Assuming that all problems mentioned have been solved how would you assess the upper limit of the capability of this development? A. There are really only three overriding factors in the present case.

69. Q. What are they? A. Firstly - create the circumstances which will permit the thermal plant to operate on the base of the load.

Secondly - adequate supplies of low cost fuel.

Thirdly - adequate supplies of cooling water.

70. Q. What about the first point? A. The capability of Sweetwater and Lost Solar, only 40 to 50 miles away, is far greater as a peaking pumped storage plant than that required to permit the Oak Creek Thermal plant to run on the base of the load for long periods at almost constant output. As the load grows and the peaks

[1967-1968]

[1967]

becomes more peaky, Sweetwater and Lost Solar with a weekly capability of some 60,000,000 kilowatt hours of generation indicates that by the addition of further units the potential peaking capacity would be of the order of 4,000 MW. Much more than that required for Oak Creek to run at a constant load throughout each 7 day cycle.

71. Q. What about adequate supplies of fuel? A. Other testimony proves that the coal reserves in Oak Creek area alone will provide deliveries of low cost minemouth coal to support a base load station of 2000MW and may be greater.

72. Q. What about the adequate supplies of cooling water for the condensers? A. With the Yampa reservoir of adequate capacity to store the snowmelt each year on a long term basis, an annual supply of 50,000 acre feet will support a 3000MW thermal station; and if the hydrology now in hand indicates an annual supply of 75,000 acre feet the water would be adequate to support a station or stations of 4,500MW.

73. Q. What does all this indicate? A. It shows that if the guide lines of the National Power Survey

[1968]

are followed nature has provided Colorado with a unique combination of fossil fuel resources to support on a mine-mouth basis a really large base load thermal plant of 4000 MW or more, and a topography for a pumped storage peaking plant which could be of beneficial use to all the utilities in the States adjoining Colorado.

74. Q. With these large blocks of power resources what about the transmission system? A. The transmission system has been designed for construction in stages, rising to a maximum demand of about 2,300 - 2,500 megawatts depending on load distribution. Reference should be made to Exhibit 100-12, Report on Feasibility - East-West Transmission Line.

75. Q. What kind of stages have been envisaged? A.

[1968-1970]

Basically three stages to permit the capital investment to be related to load demand.

76. Q. Please describe the first stage. A. Stage I envisages operation at 230 kilovolts with the 500 kilovolt line energised during this stage at this lower voltage. The limit of loading at this voltage will depend on load distribution. As planned originally, of the total of about

[1969]

500 megawatts, 300 megawatts was to be delivered at the Hayden 230 kilovolt busbars and the balance of about 200 megawatts at the 230 kilovolt busbars at Archer. It is probable that a larger proportion of this load will now be delivered at Archer with onward transmission over the Nebraska 230 kilovolt lines to North Platte and Columbus, so the basic plan of 230 kilovolts operation at this stage, remains unchanged.

77. Q. Please describe briefly the second stage. A. This comprises the 500 kilovolt transmission line with two circuits as far as Archer, and one circuit from Archer to Lincoln or Columbus. To avoid expenditure on shunt compensation for this relatively smaller loading for a 500 kilovolt line in the initial stages, the system will be operated at 345 kilovolts as described in Exhibit 100-12.

78. Q. What would you estimate would be the maximum loading under this condition? A. It is estimated at between 800 and 1,000 megawatts total. But it could be a little lower if more of the delivered load is at the far end of the line, and a little greater if the Archer and North Platte loading is greater.

[1970]

79. Q. Describe the third stage, please. A. In this stage the two 500 kilovolt circuits would be built right through to the eastern end of the system, and the 500 kilovolt system would be energised at 500 kilovolts.

80. Q. What do you estimate would be the maximum loading? A. The maximum loading would depend on the

[1970-1971]

amount of running or spinning generating plant at the eastern end of the system. With a small amount of generating plant running in the east, the maximum limit of loading could be as low as 1,600 megawatts with 1,000 megawatts delivered in the east. However, if there was 1,000 megawatts of generating plant running at times of maximum load, the loading limit for the 500 kilovolt system would be much higher; over 2,000 megawatts. It now appears that there is a greater potential load to be supplied from Archer through the Consumers Public Power System's 230 kilovolt system, and also a greater potential load to be supplied from North Platte both to supply the Central Nebraska area and the Rural Co-operatives in Kansas, and this of course will raise the transmission line capability.

81. Q. Has there been any change in the distribution of potential load along the 500 kilovolt transmission line?

[1971]

A. The latest analysis of potential loads and deficiencies in power resources indicates that there is a greater potential load to be supplied from Archer over the Consumers Public Power District's 230 kilovolt system.

82. Q. What about the potential load to be supplied from North Platte? A. The same analysis points to a much greater load with a corresponding reduction in the potential load in the eastern end of the State, and it is planned to supply the Kansas Co-operatives from North Platte over a 230 kilovolt system.

83. Q. What effect will this have on maximum loading? A. The maximum potential system load, possibly could be increased to 2,500 megawatts, but that will depend on the detailed nature of the interconnections, and the amount of running generating plant.

84. Q. What in your judgment will be the probable distribution of load? A. Using the load and deficiency projections for Consumers Public Power Districts, Nebraska Public Power System, Nebraska Municipalities, Black Hills

[1971-1973]

Power and Light Company, the Sunflower, Wheatland, Central Kansas and

[1972]

Pioneer Co-operatives in Kansas and a small allowance for some unspecified loads to take care of demands in Western and Eastern Nebraska, the projected loads in megawatts and distribution are given below.

<i>Year</i>	<i>Archer</i>	<i>N. Platte</i>	<i>East Nebraska</i>	<i>Total</i>
1970	101	228	186	515
1971	120	291	224	635
1972	150	346	270	766
1973	160	396	344	900
1974	183	472	385	1,040
1975	207	550	523	1,280
1976	232	621	587	1,440
1977	256	663	681	1,600
1978	286	749	745	1,780
1979	317	835	803	1,855
1980	350	908	828	2,086
1981	383	965	992	2,340
1982	420	1,055	1,085	2,560
1983	459	1,110	1,205	2,774
1984	499	1,226	1,275	3,000
1985	544	1,355	1,361	3,260

85. Q. Has this had any effect on the design and planning of the system?

[1973]

A. Yes, and because of the larger loads projected for Archer and North Platte, the series capacitors now will be lo-

[1973-1974]

cated between substations instead of at Archer and North Platte as originally planned.

86. Q. Does this affect the capital cost? A. Yes, it makes the system a little more costly, but the amount is not appreciable and is more than compensated for by the increased potential revenue.

87. Q. What difference will this make to the substations? A. At the moment, the transformer rating has been increased for North Platte, and it is probable that some reduction in the transformer rating at Columbus will be justified with a corresponding increase in North Platte. However many details regarding the operational requirements of the interconnection at Columbus will require determination and agreement before these changes can be finally decided.

88. Q. You have referred to details regarding operational requirements: what studies have been made with regard to design? A. Each stage has been analysed for light load, medium load

[1974]

and maximum load condition, both as regards load flow and operational control and as regards stability limits under different fault conditions.

89. Q. What were the conclusions? A. The system is stable, and the limits of stability have been described in Exhibit 100-12.

90. Q. Do you expect to have to make further studies? A. Yes, these further studies will be directed in the main to determine the controlling parameters of the supply of power and energy at each point of interconnection, as well as transient analysis under varying conditions of operation.

91. Q. What conditions? A. It will be necessary to study and establish that the various surges and disturbances which can arise on a system through operation, through switching, or through failure of equipment are controlled and do not result in the interconnections being affected adversely.

[1974-1975, 1988, 1999]

92. Q. How would you summarise this? A. A system proposed is basically and operationally feasible,

[1975]

stable and reliable, and to secure the optimum confidence in the operational reliability, each interconnection and the operating parameters of each such interconnection will require analysis, study and agreement between parties.

93. Q. Do you anticipate any difficulties? A. No.

Thank you.

[1988]

TESTIMONY BEFORE THE FEDERAL
POWER COMMISSION

PROJECT NO. 2289 - COLORADO
ROCKY MOUNTAIN POWER CO.

by

Raymond W. Stuck

1. Q. Will you please state your name and address for the record? A. I am Raymond W. Stuck of 1230 Hopedale Drive, Fort Myers, Florida.

2. Q. What is your occupation? A. I am a consulting engineer.

3. Q. Will you please briefly state your education? A. I received a Bachelor of Science degree in Civil Engineering from Case Institute of Technology in 1915, and a degree of Civil Engineer in 1919.

4. Q. Are you a registered professional engineer and, if so, in what state? A. Yes, I hold a professional engineer registration in the State of Florida.

[1999]

5. Q. Are you a member of any professional societies? A. Yes, I am a Fellow of the American Society of Civil Engineers.

6. Q. I now hand you Exhibit 100-29 titled "Profes-

[1999-2001]

sional Record Raymond W. Stuck" and ask if this exhibit was prepared under your direction? A. Yes it was.

7. Q. Please describe Exhibit 100-29. A. This exhibit shows my experience record, including my assignment with the Corps of Engineers, as Chief of the Civil Works Division, Office, Chief of Engineers, Washington, D.C.

8. Q. Are you acquainted with the location of the Sweetwater Project? A. Yes, I have been at the site and examined it in great detail.

9. Q. Describe the location of the Sweetwater project. A. The Sweetwater Creek is located in Garfield and Rio Blanco counties and has a lake as part of its regimen which was formed by an obstruction of a glacial moraine

[2000]

across the valley making an effective dam; the lake is known as Sweetwater Lake.

10. Q. What is proposed for the Sweetwater Dam? A. The Sweetwater dam will be placed across the outlet of Sweetwater Lake which, as stated above, is a continuation of the Sweetwater Creek.

11. Q. What will be the procedure? A. The dam will probably be an earthen dam, but if suitable materials are not available it will be a rockfill dam with an impermeable core.

12. Q. Why is this dam necessary? A. It will form an afterbay for the water after it passes through the turbines for the generation of power and also a storage reservoir.

13. Q. Would not the lake as it now exists form the afterbay? A. Yes, but it would not hold as large a quantity of water as it will under the proposed project.

14. Q. Why is this necessary? A. The plant as designed is to utilize the water by dropping

[2001]

it through a steel penstock into the generating turbine; and then, at times of low demand for peak power, it would

[2001-2002]

pump the water back up to the Sweetwater plant forebay above the penstock. It would be used repetitively.

15. Q. Coming back to the Sweetwater Dam, will you please explain how it will be built? A. An outlet to the Sweetwater Dam will be provided by placing a controlled outlet of concrete in the approximate area of the present discharge channel to draw down the lake and/or provide for downstream uses of the water, principally for irrigation. Then, an earth or rockfill dam will be placed across the valley tying into the natural embankment on the left, facing downstream, and into the moraine on the right side. This will be effected by excavating a core trench in the approximate center of the dam along the axis of the dam and deep into the left bank to solid rock, and also deep into the moraine on the right side. Proper selection and placing of earth will form the dam, or it will be an earth and rockfill dam which will provide a solid safe dam. This dam will raise the water level from about elevation 7,710 to a maximum elevation of 7,770, which will be the water level in the

[2002]

afterbay of the Sweetwater powerplant.

16. Q. Under this circumstance the glacial moraine will form a part of the dam. How, in your opinion, will the moraine serve as part of the dam, and also what do you think of its adequacy as a dam? A. Probably the best answer can be based on observation. The moraine is now doing good service as a dam and has for the time since the glacier deposited this moraine across the valley.

17. Q. But the conditions will be changed. Do you think the increased head of water against the dam will cause more seepage through the moraine? A. It probably will, and to keep the seepage to a minimum I would recommend an impervious compacted blanket on the upstream slope of the dam. There are sufficient funds in the contingencies item to cover the cost of this work. This blanket in turn should be protected by a 3 foot layer of riprap on a 12 inch bed of crushed rock.

[2002-2004]

18. Q. Why do you think this would then be an adequate dam? A. Close observation along the downstream slope of the moraine dam did not disclose any seepage except at the

[2003]

Boni spring, some 2,100 feet down the valley from about the toe of the moraine dam. The source and path of the seepage that reaches the Boni spring should be sealed by grouting. As it exists now, the moraine is relatively impervious in fact as impervious as many earthen dams of which I have knowledge. If seepage should appear along the toe of the moraine dam when the lake is brought to elevation 7,770, a grout curtain could be put through the moraine dam.

19. Q. Have you any idea that there is any appreciable loss of water from Sweetwater Lake? A. A very rough check was made, within the limits of my experience with this project, which shows that on June 12 and 13, 1961, the inflow into the lake was gauged at 125 c.f.s.; and on June 14, 1961, the outflow was measured and it was 121 c.f.s. This is entirely consistent as there is bound to be an evaporation loss and some seepage loss which could account for the difference. This, however, in my opinion cannot be considered conclusive; only an indication.

20. Q. What precautions are being taken to prevent the dam from being overtopped by an exceedingly severe flash flood?

[2004]

A. An overflow spillway is provided to discharge if the lake level reaches elevation 7772.5.

21. Q. What is your opinion about the imperviousness of the present lake bottom? A. Through the countless centuries the lake bottom is well silted and the moraine that might lie under the lake is practically impervious to the passage of water.

22. Q. You said seepage path to Boni Spring has been

[2004-2005]

determined. What do you mean by that statement? A. The path of seepage appears to be along the right edge of the moraine. As the moraine was deposited along what must have been a rather abrupt escarpment, the deposit could have been coarse and the water from the melting snow followed along the escarpment through the coarse deposits and now is partially sealed off, except for what appears in Boni Spring. That the flow or seepage to Boni Spring occurs as stated was verified by placing a salt solution, under pressure, in core hole No. 9, that was at the edge of the escarpment mentioned; and the solution was observed at Boni Spring 2 hours and 10 minutes after injection. The travel is about 2100 feet and represents a rate of 16 feet per minute.

[2005]

As stated above, it is my belief this flow to Boni Spring can be sealed off by grouting.

23. Q. Based on your experience on similar dams, how does the estimated cost of the Sweetwater dam compare with other similar dams? A. No two projects are exactly similar, but the estimated costs of the various items compare very favorably with others within the limit of my experience.

24. Q. Where will the Sweetwater Powerplant be located? A. It will be almost at the extreme upstream end of the Sweetwater Lake.

25. Q. Describe the Powerplant generally. A. It will be an underground plant located in solid rock and at an elevation so the tailwater will flow easily in the afterbay, which will be Sweetwater Lake.

26. Q. Why will it be an underground plant? A. Located deep underground it will be sheltered from the severe winter weather, thus assuring year-round operation; and it will not be an easily spotted target by an enemy. Also some extra feet of head on the turbines are gained, which is an economical asset.

27. Q. Is an underground plant feasible and practical? A. It is perfectly feasible and practical; many have been built.

[2005-2006]

28. Q. Is the proposed construction of the powerplant with its penstock and penstock tunnel consistent with current practice for such projects? A. It is perfectly consistent and in line with current practice.

29. Q. How does the water reach the forebay mentioned? A. Part of the volume comes by pipeline from diversion dams into the Cross Creek Tunnel, which also receives water from the Meadows Reservoir through the Plateau Tunnel. Also the forebay water is replenished by pumping, as has been stated.

30. Q. How is the Sweetwater forebay formed? A. By a forebay dam which will be a rockfilled earthen-core dam built from materials at the site.

31. Q. Do you think this dam is feasible for the purpose? A. Completely.

[2006]

32. Q. The Sweetwater plant forebay water will be discharged into the penstock through a penstock tunnel. What is your opinion of this tunnel? A. The tunnel will pass through rock known geologically as the Belden formation. Site inspection suggests the ends of the tunnel will pass through weathered rock; and, although the Belden formation is considered a hard and competent rock, the nature and service of this tunnel necessitates that it be lined throughout its length.

33. Q. Considering the Cross Creek tunnel, what is your opinion of this tunnel and its construction? A. This tunnel will pass through the Belden formation, which is similar to that through which the penstock tunnel passes, and again site inspection suggests there should be no trouble with the construction work. The portals of the tunnels must be of reinforced concrete; and, unless the tunnel goes through badly faulted areas, the tunnel need not be lined. However, provisions have been made to line about 66 per cent of this tunnel.

34. Q. The Cross Creek tunnel is supplied in part by the Plateau Tunnel. How is this connection made?

[2007-2008]

[2007]

A. The East portal of the Plateau tunnel daylights on the west bank of the Stillwater Creek so to cross the Stillwater Creek will be accomplished by a simple siphon. This is in accord with common practice and should present no difficulty.

35. Q. The Plateau Tunnel is the next to be considered. What is your opinion of this tunnel and its construction problems? A. Site inspection of the portals of this tunnel, and based on the general geological formation, it will pass through dense and competent rock for its entire length. The portals for some distance will require reinforced concrete sections to carry through the weathered rock, but it is not known how far this type construction will be required; it has been estimated at something not less than 100 feet or more than 600 feet. The tunnel, in my judgment, can be built without complete lining, but there may be areas that are faulted and shattered that will require lining. As the work progresses these zones of distress, if they occur, will become apparent. It has been anticipated that there will be areas that need lining and provisions have been made in the estimated cost to take care of such contingencies.

36. Q. Do you anticipate any difficulty in constructing the Sweetwater Diversion Dam and pipeline?

[2008]

A. Based on site investigation, there were no apparent problems other than those which are ordinarily a part of such work. There is no reason why this work could not be done expeditiously and very economically.

37. Q. Also in line with this proposed work, a somewhat similar diversion dam and pipeline is proposed for the Dry Sweetwater Creek. Do you foresee any difficulty with this dam and pipeline? A. Again based on site investiga-

[2008-2009]

tion, there are no apparent problems that would cause any difficulties.

38. Q. Have you visited the site of the Meadows Dam?

A. Yes, the site was visited July 7 and 8, 1960 and a thorough site inspection was made. From this inspection it was apparent the dam was located properly but further work was necessary.

39. Q. What was proposed at that time? A. It was my opinion and it was so expressed that foundation explorations should be made by core borings to determine the type and depth of the foundation rock.

40. Q. Was this done?

[2009]

A. Yes. A line of core holes was laid out and drilled and properly logged and are now a part of the engineering drawings.

41. Q. Based on this information what was your opinion of the site for the proposed Meadows dam. A. From surface inspection, with knowledge gained from test pit and core borings, it is believed this is the best location for this dam. The dam will rest on relatively thin layers of earth which overlay massive rock that occurs across the valley floor.

42. Q. What about the valley sides where the dam will tie into the embankments? A. The right abutment location will be in a heavy talus slope of weathered rock. It will be necessary to clear the slope of this talus material, and the core trench on the axis of the dam must be excavated through the weathered region until sound rock is encountered up to the crest of the dam. The dam embankment can then be compacted tightly against the natural embankment. If there is any danger of seepage around the end of the dam, the area should be protected by massive grouting.

[2010-2011]

[2010]

As to the embankment on the left side, site investigation indicated no serious construction problems. The core trench will be continued from the right abutment across the valley and up the left side of the valley. Unless the overburden is excessively heavy, the core trench should be put down to rock and should be carried up the left bank to the crest of the dam.

43. Q. What is your opinion of the type of dam selected?

A. The type of dam selected was the one I recommended. Because of the shortness of the construction season and the availability of material it is believed no other type of dam should be considered.

44. Q. What is the basis for this comment? A. If an all earth dam had been chosen, it would mean the material for each zone of the dam would be of selected material, the more impervious and the more carefully graded to be placed from the center of the dam outward for the full width of the structure.

Due to the very short construction season and since it has invariably a heavy snow cover in this area, material from borrow areas would be too wet for good placement

[2011]

and compaction. To dry it out by aeration and scarifying it to expose it to the sun and air, could become a major operation and might result in the necessity of doing the processing under a shed-like structure. This would be expensive and time consuming and could, in my opinion, cause one or two construction seasons more than a rock-fill dam would take. This would be especially true if the construction season were on the wet side, and my knowledge of the area indicates that this is quite possible. Core material will be required in much smaller amounts and could, if necessary, be processed in sheds. The rock fill which represents the greater amount material of the dam, could be processed; that is, quarried and stock piled dur-

[2011-2013]

ing the winter, and then during the construction period picked up and transported to the dam and placed in the outer zones. Great care of placing and compacting the core must be taken and in placing the filters against the core so there would be no possibility of materials being transported by the seepage flow.

45. Q. What precautions have been taken to protect the dam from being overtopped. A. A spillway is provided that will pass through the right

[2012]

abutment. It will be controlled and will be operated in accord with an operations program that will be adopted. It would never function except in times of near or threatened flood flows in the South Fork of the White River.

46. Q. What is being provided to draw down or empty the Meadows Reservoir should it ever become necessary. A. A controlled tunnel will go through the right abutment of the dam through massive and competent rock, as far as could be determined from onsite inspection.

47. Q. Are any construction problems likely to hinder the building of this tunnel. A. Not any more than are usually encountered. This should be started as the first construction operation on the dam. This is necessary so that the stream can be diverted through this tunnel and the construction of the dam can proceed completely across the valley and over the entire base area of the dam.

48. Q. What special recommendation would you offer on the placing of the rock fill of the dam? A. This fill should be selected so that the less coarse

[2013]

would be next to the core and then gradually increase the size toward the outside so that the largest rocks are near or on the surface of the dam. I would also insist that hydraulic giants be used to solidify and compact the rock.

[2013-2014]

This will help on the settlement of the material which can be considerable in a dam of this kind.

49. Q. What suggestions would you make to provide for settlement after construction that will appear in the structure? A. If added fill is not used and the crest of the dam brought only to construction elevation, it will appear as if the dam is sway-backed. To overcome this optical illusion and provide for the settlement, it is recommended that the embankment be made at least 6 feet higher than the ends of the dam that meet the natural bank. This in effect is putting a 6-foot camber in the structure with the greatest height of the camber being over the greatest depth of the fill. The final result should not have a displeasing appearance, especially if a road will traverse the dam.

50. Q. Are there any other suggestions you have made on the construction of the dam to insure its adequacy?

[2014]

A. It has been determined by exploration that there will be sufficient material available for the core fill. In actual placing of the fill, it should be predetermined at what moisture content of the fill it will compact to optimum density. The fill material should be always, or most preferably, on the dry side; and then, when the fill is placed and spread, moisture for optimum compaction can be added just prior to rolling.

51. Q. What added precautions should be observed and made a part of the specification? A. It should be specified that the core fill must always be kept high to provide drainage from rains or perhaps for unseasonable snows that melt quickly but still produce runoff.

• [2015]

[2015]

AFFIDAVIT

STATE OF COLORADO)

CITY AND COUNTY OF DENVER)

Raymond W. Stuck, affiant, having been first duly sworn,
deposes and says:

That he has read the foregoing testimony and if asked the questions therein his answers in response would be as shown:

That the facts contained in said answers are true to the best of his knowledge and belief: and

That he hereby adopts these answers as his own.

/s/ Raymond W. Stuck

Subscribed and sworn to before me this 25th day of February, 1966.

/s/ Louise I. Nylander

Notary Public in and for the
State of Colorado, residing at
Denver, Colorado

My Commission Expires May 17, 1969.

[2029-2030]

[2029]

TESTIMONY BEFORE THE FEDERAL
POWER COMMISSION
PROJECT NO. 2289 - COLORADO
ROCKY MOUNTAIN POWER CO.

By

WILLIAM H. NORTON

1. Q. Please state your name and address. A. William H. Norton, Osceola, Nebraska.

2. Q. What is your occupation? A. I am a lawyer and have engaged in the general practice of law for 15 years in the firm of Norton & Norton. I graduated from the University of Nebraska with degrees of AB and LLB.

3. Q. What is your relationship to the Nebraska Power Review Board? A. I am Chairman. I was first appointed to the Board in 1963 and re-appointed as Chairman for a four-year term in 1964.

4. Q. What are the authorities and responsibilities of the Nebraska Power Review Board?

[2030]

A. The powers and duties of the Nebraska Power Review Board are contained in Section 70-1001 to 70-1020, Revised Statute of Nebraska Supplement 1963. These sections are reproduced on pages 17 through 25 of the attached Exhibit 100-33 entitled SECOND ANNUAL REPORT - THE NEBRASKA POWER REVIEW BOARD TO THE GOVERNOR OF NEBRASKA 1964 - 1965.

5. Q. Would you please state whether or not it is part of the duties of the Power Review Board to familiarize itself with the present and future power requirements of all types of electric consumers in the State of Nebraska and to correlate its requirements to available supply? A. Yes. A study and survey of this nature has recently been prepared by our staff under my direction and a summary will be found on Page 35 and 36 of Exhibit 100 - 33.

[2030-2031, 2033]

6. Q. Are you familiar with the proposal that has been tendered by the Rocky Mountain Power Co. to supply thermal and hydroelectric power to users in Nebraska? A. Yes, I have participated in several meetings between representatives of the various public power districts of Nebraska and the staff of Rocky Mountain Power Co. I have also been supplied with a copy of the letter and

[2031]

attachment to Rocky Mountain Power Co. and its affiliated companies from Mr. D. W. Hill, General Manager, of Consumers Public Power District (Exhibit 100 - 04. No specific proposal reflecting the letter of intent from Mr. Hill to Rocky Mountain Power Co. has yet been made to this Board. However, it is apparent to us from the information informally received that the Rocky Mountain Power Co. and its affiliate corporations constitute one of the potentially feasible and economic sources from which the power requirements of users in Nebraska could be supplied and this proposal warrants serious consideration.

[2033]

TESTIMONY BEFORE THE FEDERAL
POWER COMMISSION

PROJECT NO. 2289 - COLORADO
ROCKY MOUNTAIN POWER CO.

BY

DONALD E. SCHAUFELBERGER

1. Q. Will you state your full name and address, please?
A. Donald Edward Schaufelberger. My business address is Consumers Public Power District, Columbus, Nebraska.

2. Q. What is your educational background? A. I have a Bachelor of Science degree in electrical engineering.

3. Q. I hand you Exhibit 100-33 consisting of one sheet titled "Experience Record of Donald Edward Schaufelberger" and ask if this exhibit was prepared under your direction? A. It was.

[2033-2035]

4. Q. Please describe Exhibit 100-33? A. Exhibit 100-33 shows my academic background, my membership in professional organizations and a

[2034]

chronological summary of my experience.

5. Q. What is your present position? A. I am Operations Director of Consumers Public Power District.

5. Q. Are you familiar with the engineering features of Project 2289? A. Yes. I have become familiar with Project 2289 because Consumers Public Power District has recently indicated by a letter of intent dated January 27, 1966, its intention to negotiate to reach an agreement to purchase bulk supplies of power and energy, commencing in 1970, from the Rocky Mountain Power Company, and its affiliate thermal producer and transmission facilities.

7. Q. Why would such an arrangement be attractive to Consumers Public Power District? A. Because through the combined operation of the projects with the pumped storage project operating so as to permit the thermal plant to run at base load, it could be expected to result in low rates for power and energy which Consumers Public Power District is seeking.

[2035]

8. Q. To secure low cost power and energy it is usually a prerequisite that the power plants and transmission system deal with large blocks of power; and will this apply to your organization in Nebraska? A. Yes, it will.

9. Q. Please give us the benefit of the load projections for which your organization considers it necessary to plan. A. Table I of Exhibit 100-34 shows the projections of the load demand which the system of Consumers Public Power District will have to meet.

10. Q. How have these projections been arrived at? A. A careful analysis was first made of the trends of load growth by months, using the past ten years of record as the basis; this gives the future load growth pattern, and that in

[2035-2037]

turn has been applied to determine the maximum peak loads to be met each year.

11. Q. Have you used the same annual growth rates? A. No. For the years immediately ahead, a rate of 8.6 percent per annum has been used for the month of July - the month of the greatest demand - and to be conservative,

[2036]

the rate has been reduced gradually for the other years as follows:

Up to 1972 inclusive 8.6 percent; 1973 and 1974, 8.0 percent; 1975 and 1976 7.5 percent; 1977 and 1978 7.0 percent; and 1979 and thereafter 6.5 percent.

12. Q. Do you consider these growth rates realistic? A. They are probably over-conservative since the ten year past history shows no trend of diminishing growth rate as used.

13. Q. Why do you think so? A. Because it is necessary to consider the growth rates in relation to the activities of the community, the growth of the population, the growth of local industries, the average income of a family, and of course the future projections in respect of each of these factors, none of which show immediate signs of lower rates of growth.

14. Q. Do you consider it possible for these load growth rates to be exceeded? A. Yes, if the present momentum of the growth of the Nation's economy is maintained, the loads will be greater.

[2037]

15. Q. Have you assessed them? A. Yes, and Table II of Exhibit 100-34 shows the estimated load demands for average and probable maximum rates of growth of load, and the corresponding deficiencies which will have to be met either by purchasing the requirements from the Mountain Midwest Power Pool, of which Rocky Mountain Power Company is an essential component, or he met from other sources or facilities of Consumers Public Power District.

16. Q. Having studied your own system, have you

[2037-2039]

knowledge of the projected load growths and corresponding deficiencies of the other utility groups in Nebraska? A. Yes.

17. Q. What do you consider will be the deficiencies of these other utility groups in Nebraska? A. Exhibit 100-34 shows these projections, and in particular:

Table III - deals with the projections made by Nebraska Public Power System

Table IV - shows the summation of the Consumers Public Power District's conservative projections and the Nebraska Public

[2038]

Power System's projections.

Table V - shows the projections for the Municipalities in Nebraska

Table VI - shows the projections for Omaha Public Power District

Table VII - is a summation of the projections for Consumers Public Power District, Nebraska Public Power System, the Municipalities and Omaha Public Power District.

18. Q. As a utility with interconnections, or interconnections through other organizations, in the north to South Dakota, in the west to Wyoming, and in the south to Kansas, do you consider there exist appreciable deficiencies which could be met by the power produced by the mountain midwest power pool? A. Yes, certainly there are.

19. Q. Have you sufficiently close association with these utilities in the north and south to make such a statement. A. Yes I have, because of the interconnections with Black

[2039]

Hills Power and Light Company in the north and Tri-State Co-operative in the West, and planned interconnections with certain Co-operatives in the south, and having been associa-

[2039-2040]

ted with the negotiations and discussions of these utilities to meet their known deficiencies of power resources in the coming years, I can testify that the deficiencies are real.

20. Q. Have you any knowledge of these projections and deficiencies and if so, what are they? A. Reference should be made to Exhibit 100-34 and more particularly to the following tables:

Table VIII - Projected Load Demands and Deficiencies of Black Hills Power and Light Company.

Table IX - Projected Load Demands and Deficiencies of four Co-operatives in Central and Western Kansas, and Certain Municipalities in the Same Area.

21. Q. In view of your knowledge of the loads and utilities resources of the area, what would you estimate are the minimum deficiencies to be met up to 1985? A. These are set out in detail in Exhibit 100-34:-

[2040]

Table X - Minimum projected loads and deficiencies to be met by the Utilities of Nebraska with the addition of Black Hills Power and Light Company and the four Co-operatives in Kansas.

22. Q. To the best of your knowledge, are there any other interchange and co-ordination agreements which are likely to reduce these deficiencies? A. Yes, there are long term contracts with the Bureau of Reclamation, with the Tri-State G. and T., and with Basin Electric, which has a thermal plant near Stanton, North Dakota, and these have been taken into consideration in the projection deficiencies. There are also agreements or understandings with Omaha Public Power District and Midcontinent Area Power Planners, and it is possible that some of the deficiencies could be supplied by other utilities associated with Midcontinent Area Power Planners if their rates for power and energy deliveries are competitive, bearing in mind such power and

[2040-2042]

energy will normally be available on a short term basis only.

23. Q. Having regard to the foregoing and your knowledge that power agreements cannot be consummated immediately,

[2041]

what would you consider would be the probable need which the Power Pool and its associates will meet? A. I do not wish to speak for other Nebraska Utilities, but I have knowledge of the minimum requirements of Consumers Public Power District and can assess the situation of the Kansas Co-operatives, and would refer you to Exhibit 100-34.

Table XI - Minimum Requirements Which Could be
Supplied by the Power Pool

24. Q. Having regard to your knowledge of the power industry in Nebraska, and without intending to speak on behalf of other Nebraska utilities, what would you consider would be the probable load demands which the Power Pool will have to meet? A. It is difficult for me to assess the position of Omaha Public Power District, who have normally not gone outside their area for sources of power other than short term, but having regard to the cost of the power and energy from the Power Pool, it would be realistic to include Nebraska Public Power System in the probable load and would refer you to Exhibit 100-34, Table XII.

25. Q. Tables XI and XII indicate a small load in 1970; how do

[2042]

you consider such a small load can justify the capital investment on a 500 kilovolt transmission line? A. The transmission system has been designed to allow development in stages, so as to conserve capital investment. The loads of 1970 can be met and supplied with the power being delivered on the 230 kilovolt busbars at Archer, near Cheyenne. This is possible because jointly with Tri-State Generation and Transmission Co-operative, Consumers Public Power District is building a 230 kilovolt line from Stegall to Sid-

[2042-2044]

ney and on to North Platte. Arrangements would have to be made with the U.S.B.R. to wheel over their 230 kilovolt system from Archer to Stegall.

26. Q. How do you envisage the delivery of power will develop in the early years? A. The next stage would be extension of the transmission line from Archer to North Platte, designed for 500 kilovolts but operated on 345 kilovolts. This line would be extended to the Columbus or Lincoln area, and the raising of the voltage will follow after the circuits have been duplicated. This program compliments Consumers long range planning.

[2043]

27. Q. Having regard to the interconnections and agreements with the utilities of adjoining States, how do you think the interconnection with Power Pool will develop?

A. The Nebraska Utilities are virtually at the crossroads, with interconnections north and south to take care of the seasonal diversity in load demand and the interconnections east and west to the time zone diversity. Therefore to secure the best advantage from these diversities it follows that some of the deficiencies will have to be supplied from the north and the east to justify the capital investment in the interconnections.

28. Q. Will the interconnection with the Power Pool provide any other benefits for the Nebraska Utilities? A. In addition to the low cost power and energy for many years to come, the utilities of Nebraska will be in a position to use the pumped storage facilities to the Rocky Mountain Power Company.

29. Q. How can that happen, with these pumped storage sites some 600 miles from Columbus, Lincoln and Omaha?

A. By virtue of the interconnected system, the power and energy produced from any new generation installed in the

[2044]

eastern part of Nebraska during periods of light load would displace the power and energy produced at Oak Creek thus

permitting power to be used for pumping water, at times of low load, into storage at Sweetwater; this water would then be released later for meeting the peak loads, including Eastern Nebraska.

30. Q. Of what advantage would that be to the Nebraska Utilities? A. It will permit the installation of really large thermal or nuclear generating units, and because of this interconnection with the Rocky Mountain Power Company's pumped storage facilities, these large units will be operated at or near their continuous designed ratings for long periods of time.

31. Q. What operational advantage do you obtain? A. Really, there are four advantages or benefits, all well known:

1. Fuel economy through long operation at or near design rating.
2. Better use of capital through the generation of more kilowatthours for the capital investment.

[2045]

3. Lower maintenance costs through avoiding frequent changes in the thermal differentials of expansion of turbines and boilers.
4. Early retirement of small units which are costly both as regards fuel and operating personnel.

Without the Sweetwater pumped storage project designed to operate on a seven-day cycle which includes the difficult low load days of Saturday and Sunday, a considerable amount of overage small capacity plant would have to be retained with the attendant high fuel and operating costs.

32. Q. Are there other advantages to be obtained from this interconnection? A. Yes, probably the most important one to utilities is having generating capacity available of an appreciable amount which can generate both real and reactive power and have this power available for the system in a matter of seconds. There is nothing available to the utility industry at present which can deliver these benefits so quickly.

[2045-2047]

33. Q. It appears that you envisage thermal generating plant being installed in the east; is that so, and perhaps you will

[2046]

give us your reasoning? A. The basic cost of coal delivered at the Oak Creek thermal plant which is 14.5 cents per million British thermal units. The present corresponding price of coal delivered alongside the site in Nebraska by barges or rail is approximately 27.7 cents, and about 28.5 cents if the cost of handling the coal is included. Therefore the fuel element in the cost of energy per kilowatthour is double in Nebraska as compared with a minemouth site in the Rockies. This difference must be weighed against transmission costs. The interconnection with mountain midwest power pool will produce, apart from the long term low cost power and energy, the following additional advantages:

1. Once the interconnector is loaded it may become justifiable to install large high heat economy units in Nebraska which running on the base of the load will compensate partially for the higher fuel cost.
2. Scheduled and emergency generating standby provided at a lower cost, at Sweetwater, than any other means at present available.
3. Having the large generating units running on the system in the east will raise the stability limit of the inter-

[2047]

connector and hence increase the loading capability of the system as a whole without an increase in capital investment.

34. Q. To the best of your knowledge are there any other loads which could be supplied apart from those in the adjoining eastern States? A. Yes, I consider there are two possibilities:

- (a) Power and energy to be supplied into the Bureau of Reclamation Substation at Hayden to replace that

[2047-2049]

supplied by the Bureau of Reclamation from Glen Canyon to the Salt River Project in Phoenix; this amounts to 250 megawatts and is required by about 1971 or 1972 and if not supplied by Mountain Midwest Power Pool, I understand will necessitate a thermal plant of that capacity in the Colorado coal fields, probably at Hayden.

- (b) Peaking capacity for existing Hayden plant. The pumped storage facilities of Sweetwater could make a twofold contribution to the economy and capability of the Hayden plant, namely:

- (i) Increase the firm capability by providing the peak power and energy generated from water stored

[2048]

by the Hayden energy supplied during periods of low load.

- (ii) Reduce the cost of the energy generated because the output in kilowatthours and in kilowatts of demand will be increased substantially.

[2049]

AFFIDAVIT

STATE OF NEBRASKA)

)

COUNTY OF LANCASTER)

Donald Edward Schaufelberger, affiant, having been first duly sworn, deposes and says:

That he has read the foregoing testimony and if asked the questions therein his answers in response would be as shown;

That the facts contained in said answers are true to the best of his knowledge and belief; and

[2049-2050]

That he hereby adopts these answers as his own.

/s/ Donald Edward Schaufelberger

STATE OF NEBRASKA)
) SS
COUNTY OF LANCASTER)

On this 26th day of February, 1966, before me, the undersigned, a Notary Public in and for said County of Lancaster, State of Nebraska, personally appeared Donald Edward Schaufelberger to me known to be the identical person who signed the foregoing instrument, and acknowledged to me that he is the Operations Director of the Consumers Public Power District and has signed the same as his free and voluntary act and deed.

Witness my hand and Notarial Seal the day and date first written above.

/s/ Virgil Storrs
Notary Public

My Commission Expires the 29 day
of Oct. 1966

[2050]

TESTIMONY

BEFORE THE FEDERAL POWER COMMISSION

PROJECT NO. 2289-COLORADO
ROCKY MOUNTAIN POWER CO.

By

Thomas M. Lydon.

1. Q. Will you state your full name and address, please.
A. Thomas M. Lydon. My business address is The Pittsburg

[2050-2052]

& Midway Coal Mining Co., Hanover Building, Kansas City, Missouri.

2. Q. What is your occupation? A. I am Vice President of Sales of The Pittsburg & Midway Coal Mining Co.

3. Q. Are you familiar with Project No. 2289-Colorado before this commission? A. Yes. We plan to supply the coal as fuel for the associated thermal plant which was described earlier in this proceeding and consequently have kept ourselves informed of the plans and progress of Project No. 2289-Colorado.

[2051]

4. Q. Has your company indicated its intention to supply Oak Creek Power Company with coal for the plant at Oak Creek, Colorado? A. Yes. On behalf of The Pittsburg & Midway Coal Mining Co. as its Vice President, I signed a letter, dated February 17, 1966, agreeing to enter into a contract, a copy of which has been presented as evidence.

5. Q. I now hand you Exhibit 100-05 consisting of a letter with a seventeen page contract attached, entitled, "Coal Supply Agreement" and ask if this is the letter and contract of which you are speaking? A. Yes. This is the letter and contract between Oak Creek Power Company, as buyer, and The Pittsburg & Midway Coal Mining Co., as seller, of the coal for fuel for the Oak Creek thermal electric powerplant.

6. Q. Does the seller have adequate coal available to meet the needs of the buyer? A. Yes. We have made sufficient studies and have done sufficient exploration work in the Oak Creek area to know that we have quality coal in reserve, both on the surface and underground, to take care of the buyer's needs for a 1,500,000-kilowatt thermal plant for the full plant contract life of 35 years.

[2052]

7. Q. Please describe the location of the deposit from which you propose to supply fuel to the Oak Creek plant.
A. The principal deposit is located adjacent to the proposed

[2052-2053]

Oak Creek plant site on Trout Creek and is referred to as the Edna Mine.

8. Q. Is the Edna Mine now producing? A. Yes.

9. Q. How long has the mine been producing? A. The Pittsburg & Midway Coal Mining Company acquired this property in September 1961 and has operated the mine since this date. Prior to this date the mine had been in operation many years under other ownership.

10. Q. Can you describe in detail the exploratory work done by your firm to establish the coal reserves in the vicinity of the proposed Oak Creek plant. A. Mr. J. A. Miner, Chief Engineer of The Pittsburg & Midway Coal Mining Co. will testify in detail to this question.

[2053]

TESTIMONY

BEFORE THE FEDERAL POWER COMMISSION

PROJECT NO. 2289 - COLORADO
ROCKY MOUNTAIN POWER CO.

By

(Pittsburg & Midway
Chief Engineer)

1. Q. Will you state your full name and address, please? A. James A. Miner Sr. My business address is The Pittsburg & Midway Coal Mining Co., 15 West 10th Street, Kansas City, Missouri.

2. Q. What is your educational background? A. I studied engineering at Kansas State Teachers college three years while employed by the K-C-S Railroad, the last year enrolled was 1927-28. I obtained my certificate as a Registered Professional Engineer from the State of Kansas by oral and written examination during 1936.

3. Q. I now hand you Exhibit 100 "A" consisting of one sheet entitled, "Experience Record - 1923 to present," and ask if this exhibit was prepared under your direction? A. "Yes"

[2053-2055]

4. Q. Please describe Exhibit 100 A. A. Exhibit 100 A shows my academic background, my membership in professional organizations and a chronological summary of my experience.

[2054]

EXHIBIT 100 "A"

James A. Miner, born Edinburg, Indiana, March 15, 1905, son of John T. and Harriet (McLaughlin) Miner; High School at Edinburg, Indiana, Student Kansas State College 1924-28. Married Lavena Dixon December 14, 1937; children, James A. Miner Jr., Mary Miner and Jane Miner.

With engineering department Kansas City Southern Railroad 1923-31; mining engineer Pittsburg & Midway Coal Mining Co. 1931-41; chief engineer Pittsburg & Midway 1941-46; president, Chairman of the Board Colonial Coal Mining Co., Madisonville, Kentucky a subsidiary of P & M Coal Mining Co., 1946-56 at which time Colonial was merged into P & M Coal Mining Co., Vice President P & M and manager Colonial Mine 1956-60 when Pittsburg & Midway became a subsidiary of Spencer Chemical Co., Resident Manager for Pittsburg & Midway in Kentucky and manager Colonial Mine 1960 - 1-1-64, at which time Spencer Chemical Co. was purchased by Gulf Oil Corp., Vice-President & Chief Engineer Pittsburg & Midway Coal Mining Co. 1-1-64 to present. Transferred from Kentucky to Kansas City, Missouri, Regional Professional Engineer Kansas & Kentucky; NSPE; AIME; Board Member Kentucky Reclamation Association., Western Kentucky Coal Producers Inc., member Elks, Madisonville Country Club.

[2055]

5. Q. What is your present position? A. I am Vice President & Chief Engineer for The Pittsburg & Midway Coal Mining Co.

6. Q. Are you familiar with Project No. 2289-Colorado? A. Yes. We have planned on supplying their coal needs for the thermal plant at Oak Creek, Colorado.

[2055, 2245]

7. Q. Does The Pittsburg & Midway Coal Mining Co. have adequate quality reserves available to supply the Oak Creek Power Company's plant with fuel? A. Yes. Geological data by USGS, drilling and exploration work under my supervision shows that we have approximately 38,000,000 tons of strip coal ready and available for them and in addition we have established to my satisfaction that we own or control deep mine reserves of approximately 23,000,000 tons and that there are additional reserves estimated to be 100,000,000 tons available for mining at this same location but are subject to additional exploration.

Signed James A. Miner Sr.

[2245]

CONSUMERS PUBLIC POWER DISTRICT

GENERAL OFFICE
COLUMBUS, NEBRASKA

January 27, 1966

Mr. Charles F. Brannan
Mountain-Midwest Power Pool, Inc.
1575 Sherman Street
Denver, Colorado 80203

Dear Mr. Brannan:

We have reviewed with you the Memorandum of Understanding attached to this letter as Exhibit A, and the facts set out therein concerning Consumers' operations and its estimated future requirements are correct.

It is our intent to negotiate with you to reach an agreement on a contract for Consumers to purchase power and energy from you as outlined in the Memorandum of Understanding when you have:

1. Obtained the rights you need in order to deliver power to us over transmission systems of others.

[2245-2246]

2. Obtained the necessary regulatory commission approvals for your project.

3. Fixed the price of the power and energy which you will deliver. The Memorandum of Understanding makes certain assumptions as to interest rates, and when the rates have been determined, it will be possible for us to compare the cost of purchasing from you with other possible sources of power.

We are most interested in cooperating with you so as to bring to the people of Nebraska the benefits of low-cost power that you are seeking to develop. We will appreciate your keeping us advised as to any change in your intentions, and we shall plan to advise you of any change in our situation in this matter.

Very truly yours,

DWH:CF
Attach.

D. W. Hill,
General Manager

cc: Chas. F. Brannan, Washington, D.C.
Don E. Schaulfelberger
Wm. H. Norton
Richard D. Wilson

[2246]

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

It is the purpose of the parties to this Memorandum to state their respective intentions and understandings with respect to the generation and transmission of electric energy by Mountain-Midwest Power Pool, Inc. to Consumers Public Power District.

PARTIES

1. Consumers Public Power District is a public corporation and political subdivision created by and existing under

[2246-2247]

the laws of the State of Nebraska (Hereinafter sometimes referred to as "CONSUMERS") and is presently engaged in the generation and purchase of electric energy and the transmission, distribution and sale of such energy to users in the State of Nebraska.

2. Mountain-Midwest Power Pool, Inc. (hereinafter sometimes referred to as "PRODUCERS") is a non-profit corporation under the laws of the State of Colorado which is fully authorized to represent, negotiate for, and firmly bind:

- (a) Rocky Mountain Power Co., a Colorado corporation, possesses decreed water rights on tributaries on the Colorado River located in Western Colorado, together with an excellent hydroelectric power site for the beneficial applications of said waters to the production of electric energy. Feasibility and engineering studies of this project have been prepared and filed with the Federal Power Commission, copies of which have been supplied to CONSUMERS.
- (b) Oak Creek Power Company, a Delaware corporation, possesses contingent interests in a valuable thermal power producing site in Routt County, Colorado, situated upon and adjacent to ample high quality long term coal supplies. Feasibility and engineering

[2247]

studies have been prepared and copies made available to CONSUMERS.

- (c) East-West Intertie, Inc., a Delaware corporation, has developed plans for transmitting the electric energy to be produced at the aforesaid hydro and thermal power producing sites to a point within or adjacent to Nebraska. Feasibility and engineering studies of this transmission system have been prepared and copies made available to CONSUMERS.

FACILITIES

- 3. Rocky Mountain Power Co. proposes to construct the

Sweetwater hydroelectric plant at Sweetwater Lake on Sweetwater Creek (a direct tributary of the Colorado River) in Garfield County, Colorado, consisting of pumped-storage and conventional hydroelectric generating facilities. In its first stage, the Sweetwater hydroelectric project will have a rating of 165 megawatts at minimum head and a peaking capability of 200 megawatts. In its second state it will have a rating of 330 megawatts at minimum head and a peaking capability of 400 megawatts. Development and expansion of additional capacity will be based on the storage reservoir to be built at Meadows on the South Fork of the White River. This reservoir will be connected by a pipe line and tunnel with Sweetwater forebay, thereby permitting expansion of Sweetwater capacity. Provision is also made for future expansion of the hydroelectric capability of the project by construction of a pumped-storage plant on the South Fork of the White River for generation of additional peaking power also based on Meadows Reservoir.

4. Oak Creek Power Company proposes to construct a base-load coal fired thermal plant at Oak Creek, Colorado, with an initial installation of two units, each having a normal rating of 300 megawatts and capable of continuous operation at 300 megawatts. The reserves of

Coal in the vicinity and ample supplies of water will permit this facility to expand its production to 1800-2000 megawatts.

5. East-West Intertie, Inc. possesses the engineering competence and experience to construct transmission lines interconnecting the Sweetwater hydroelectric plant with the Oak Creek thermal plant and each of these with the Bureau of Reclamation's substation at Hayden, Colorado. A 230 kilovolt line is contemplated for these connections. East-West Intertie, Inc. has also performed the necessary engineering studies by means of which a 500 kilovolt transmission line connecting the Oak Creek station with the Bureau of Recla-

[2248-2249]

mation's sub-station at Archer, Wyoming, and from there to Columbus, Nebraska, or other point designated by CONSUMERS with substations to be built at North Platte and such other point as CONSUMERS designate.

6. Consumers Public Power District is now operating electric generation and distribution facilities serving more than 350 municipalities at wholesale or retail, industrial, urban and rural residential and other type users in _____ counties of Nebraska, the power requirements of which for all types of users is increasing at a greater rate than available supplies. It is thus anticipated that by 1970 there will exist a deficiency in power supplies to supply CONSUMERS' customers of approximately 100 megawatts and in the area served by CONSUMERS of approximately 200 megawatts, and that the demand of such users and area is projected to increase. Therefore, CONSUMERS is presently seeking a source of additional supply of a comparable amount of electrical energy to be available in 1970, and increasing annually thereafter at an approximate rate of 7 to 10% per annum of CONSUMERS' total load demand.

7. It is the belief of the parties that as and when the power producing facilities of PRODUCERS are operational, such facilities will constitute a source from which the power requirements of CONSUMERS and other user groups with which CONSUMERS now maintains operating relation-

[2249]

ships may be feasibly and economically satisfied both for the immediate future as well as for the longer term. Therefore, in order to make possible the initiation by PRODUCERS of construction and other steps as are necessary to the generation of both thermal and hydroelectric power by 1969, CONSUMERS declares its intention to purchase electric energy from PRODUCERS to meet its additional requirements in 1970 subject to the terms, conditions and provisions herein outlined:

PRICE

8. PRODUCERS agree to make electric energy available to CONSUMERS at the Oak Creek thermal plant switchyard at 230,000 volts at the following rates:

- (a) \$12.50 per kilowatt per annum for contracted power demand. The foregoing demand charge is based on the ability of PRODUCERS to obtain construction funds for generation at an interest rate of 5 ½%. In the event the interest rate is decreased or increased the foregoing rates will be amended accordingly.
- (b) 2.1 mills per kilowatt hour for energy. This energy rate is based on a cost of fuel for the thermal plant of \$0.145 per million B.T.U. In the event the cost of fuel is decreased or increased, the foregoing rates will be amended accordingly.
- (c) For delivery of power and energy to CONSUMERS at 230,000 volts at the rate of:
 - (i) 0.3 mills per kilowatt hour delivered at Hayden, Colorado.
 - (ii) 0.75 mills per kilowatt hour delivered at Archer, Wyoming.

[2250]

- (iii) 1.0 mills per kilowatt hour delivered at North Platte, Nebraska.
- (iv) 1.0 mill per kilowatt hour delivered at Columbus, Nebraska.
- (v) The foregoing transmission charges are based on procuring the construction funds for transmission at an interest rate of 2.35%. In the event the interest rate is decreased or increased, the foregoing charges will be amended accordingly.

[2250-2251]

OPERATION OF FACILITY

9. PRODUCERS recognizes CONSUMERS' obligation to deliver the power to be made available pursuant to this memorandum to its contract purchasers in as efficient and dependable manner as possible and that CONSUMERS must have the right to effectively participate in the direction and control of the above described production and transmission facilities. Hence, it is PRODUCERS' intention that CONSUMERS shall be given full participation in the operations of PRODUCERS' entities so as to best accommodate the marketing requirements of CONSUMERS consistent with the economic interest of PRODUCERS.

OPTION

10. PRODUCERS also intends to grant to CONSUMERS an option to purchase the generation and transmission facilities hereinabove described (reserving only to Rocky Mountain Power Co. the rights to the beneficial application whenever consistent with power generation of all water for other than power producing purposes) subject to such bond or mortgage indebtedness as may exist at the time of the exercise of said option at a price equivalent to the investment cost to PRODUCERS at the date said option is exercised plus accrued simple interest at the rate of 4% per annum. Said option may be exercised by CONSUMERS at any

[2251]

time after a date which is 20 years after the date of the first delivery of power pursuant to this memorandum. Investment cost as in this Section 10 used shall consist of the accumulated funds actually expended by each of said entities as of the date of the first delivery of power less any repayment thereof which shall have been made of the loans secured by a lien upon said facilities. In any event, each of the above described facilities (except water rights) shall pass into the complete ownership and control of CONSUMERS upon payment of the final installment of the mortgage or bonded indebtedness against said facility.

FINANCING

11. The parties understand that PRODUCERS must borrow the funds necessary to build the above described facilities and that said facilities will be subject to a lien for the repayment of said borrowings. The parties further understand that the income to be derived by PRODUCERS from CONSUMERS pursuant to the sale and purchase of power as hereinabove contemplated will also be assigned as additional security for the repayment of said loans and CONSUMERS agrees that, subject to applicable law, it will cooperate with PRODUCERS in securing the necessary construction loans.

12. The parties hereto agree that they will promptly initiate a joint and cooperative effort to secure letters of intent and contracts for the sale of the power herein contemplated to be generated and transmitted to other users within the State of Nebraska and neighboring states.

13. The parties also agree to make reasonable and timely effort to develop all pertinent information in an effort to reach a definitive agreement covering all phases of the relationship hereinabove contemplated in a manner beneficial to the electric users in the State of Nebraska. Prior to entry into a contract or contracts

[2252]

[2252]

or incurring any legal obligations to each other, the parties shall obtain all necessary regulatory approvals and negotiate definite contracts between them and with any other necessary parties.

WITNESS our respective signatures this _____ day of January, 1966.

CONSUMERS PUBLIC POWER
DISTRICT

By _____
President

MOUNTAIN-MIDWEST POWER
POOL, INC.

Acting for Rocky Mountain
Power Co., Oak Creek
Power Company and
East-West Intertie, Inc.

By _____
President

[2267]

[2267]

EXHIBIT 100-06
Project No. 2289
Rocky Mountain Power Co.
Witness: BRANNAN

*FORTY WALL STREET
NEW YORK, N.Y. 10005*

KUHN, LOEB & CO.

February 28, 1966

Rocky Mountain Power Co.
Oak Creek Power Co.
East-West Intertie, Inc.
c/o Charles F. Brannan
1575 Sherman Street
Denver, Colorado 80203

You have presented for our study a series of reports dealing with the proposed "Mountain - Midwest Power Pool" consisting of (a) application for the Sweetwater Hydroelectric Project (Volume I November 30, 1964 and Volume II December 31, 1964); (b) Oak Creek Thermal Electric Plant Report on Feasibility (December, 1964); and (c) East-West Transmission Line Feasibility Report (Two Volumes December 1964). In addition we have received a brochure describing the Power Pool, a draft of a proposed power purchase agreement with Consumers Public Power District with covering letter from Mr. D. W. Hill, general manager, and several other documents.

You have requested our advice on the requirements for assuring the financial feasibility of the Sweetwater Hydroelectric Project.

You have further advised us that the total invested capital required for the integrated pool is approximately \$186,235,000 of which \$44,904,000 is attributable to the Sweetwater Hydroelectric Project. You advise us further

[2267-2268]

that the projections are based upon REA financing at a 2% interest cost of 90% of the total cost of the transmission line of \$62,840,000, and that the balance of the funds required will be financed from conventional sources either by means of corporate obligations or through the instrumentality of a non-profit, non-stock corporation which would qualify under Section 103(a)1 of the Internal Revenue Code of 1954 to issue securities the interest on which would be exempt from federal income taxes.

[2268]

Rocky Mountain Power Co.

Oak Creek Power Co.

East-West Intertie, Inc.

- 2 -

February 28, 1966

You have advised us that the Company is establishing its right to use approximately 150,000 acre feet per year of water from tributaries of the Colorado and White Rivers and is acquiring the necessary real property and interests within the State of Colorado for its Project, that the Company will construct high altitude dams in the vicinity of the South Fork of the White River and of Sweetwater Lake, Colorado, for the storage of such water and to construct facilities having an anticipated total installed capacity of for the first stage of the Project, 400,000 kilowatts of Hydro Peaking at Sweetwater and 600,000 kilowatts of Thermal Base Load at Oak Creek.

We can express no opinion as to the availability of REA funds for the transmission line, but the ability to finance the balance of the project on economic terms depends upon such financing being obtained.

In our opinion it will also be necessary for you to establish the following:

(1) The Company shall have good right and lawful authority to appropriate, store, and divert approximately 150,000 acre feet per year of water from tributaries of the Colorado and White Rivers for the purposes of the Project

and to construct, finance and operate the Project, and if the Company is required to have a license, order or other authority with respect to the Project from any Federal, State or other governmental agency or regulatory body having lawful jurisdiction, such license, order or other authority will have been obtained; the water required for the construction and operating of the first stage of the Project has already been decreed;

(2) The Company shall have acquired all real property and interests necessary and sufficient for the construction and operation of the Project;

(3) The Project shall be demonstrated on the basis of independent engineering studies and surveys to be financially feasible and sound;

[2269]

Rocky Mountain Power Co.

Oak Creek Power Co.

East-West Intertie, Inc. - 3 - February 28, 1966

(4) The Consumers Public Power District and other financially qualified purchasers shall have entered into contracts with the Company to take power from the Project (i) for a period of years at least equal to the term of the Company's obligations to be issued to finance the Project, and (ii) at rates which will produce revenues during such period at least sufficient to provide for operation and maintenance expenses, taxes (including applicable income taxes) payable on account of ownership and operation of the Project, renewals and replacements which may become necessary and which are not classifiable as maintenance expenses, and amortization of and interest on all obligations issued to finance the Project;

(5) The Company shall have entered into an indenture with a qualified corporate trustee containing such terms, conditions and covenants as the Bankers shall deem necessary or advisable for a successful financing of the Project;

[2269, 2881, 2888]

(6) The Company shall have entered into a fixed price contract or unit price contract with a satisfactory guarantee against overruns for the construction of the Project by a reliable firm or group of contractors, including provision for an adequate completion bond;

(7) There shall be no legal or economic impediments to the authorization, construction, or operation of the proposal;

(8) All agreements, studies, authorizations, licenses and instruments will be in form satisfactory to counsel for the bankers and investors.

In view of the present unsettled state of the bond market, the continuing rise in interest rates and a developing shortage of investment funds, it is not possible to state at this time the basis upon which this project would be financeable. Since it will be some months before this project is approved and ready for financing, we shall continue our studies and keep you advised of developments in this area.

Very truly yours,

/s/ Jerome S. Katzin

Jerome S. Katzin

[2881]

* * *

EXHIBITS IN SUPPORT OF APPLICATION FOR LICENSE
VOLUME VI

* * *

[2888]

ECONOMIC ANALYSIS

* * *

Cost comparisons were made adopting interest rates of 4 percent, 4 ½ percent, and 5 ½ percent per annum. A third rate was calculated at 2 percent per annum for transmission lines since the line will serve rural areas in Nebraska. * * *

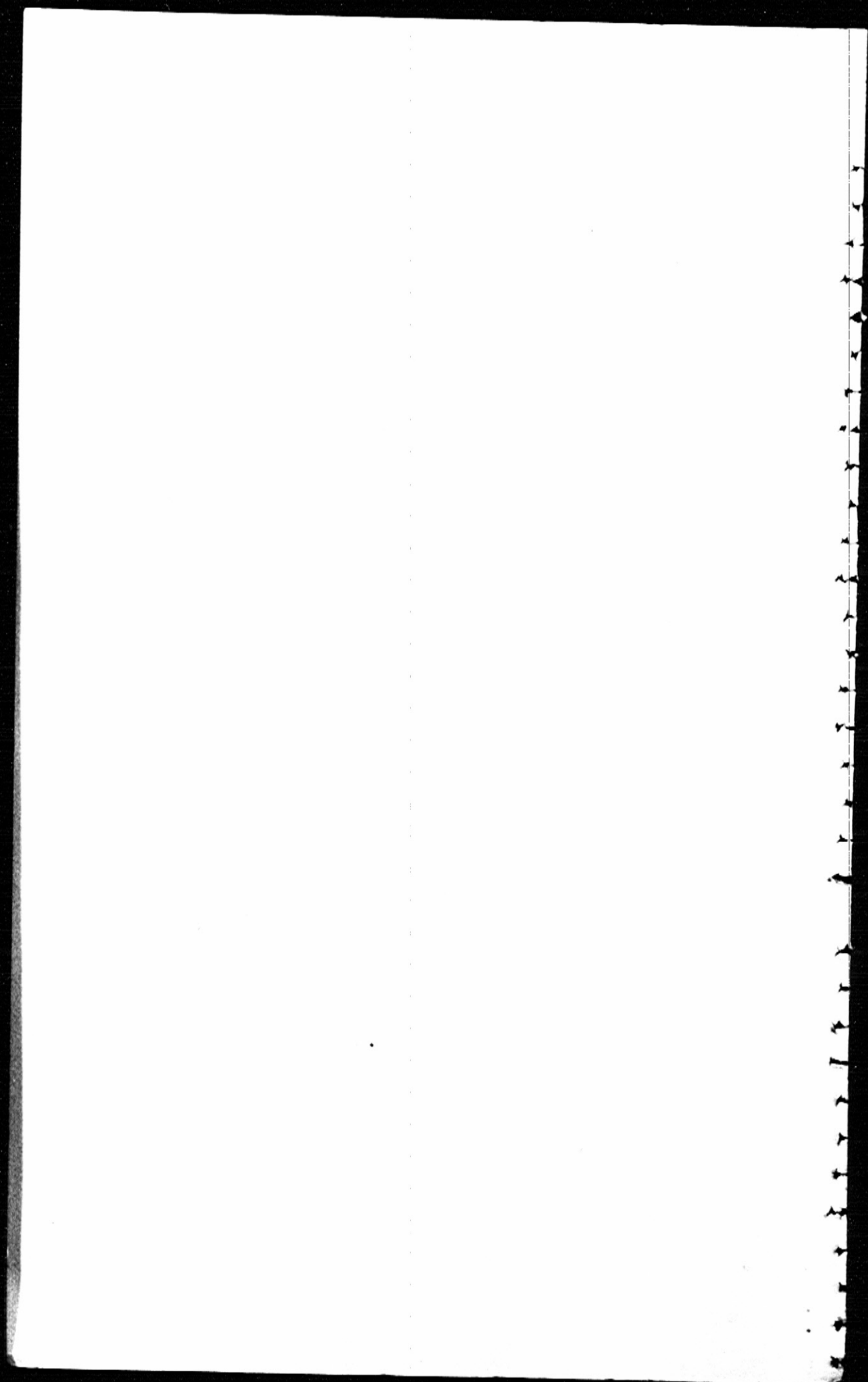


Exhibit 100-16
 Consisting of 6 pages
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: COTTON

ANALYSIS OF
MOUNTAIN - MIDWEST POWER POOL
SYSTEM, AS PLANNED

A. Pumped Storage Plants Plus Steam Generation

Total Available Megawatts, Peaking

Description	Stage I B peak	Stage II BB peak	Stage III BB peak
Steam	600	900	1,500
Pumped hydro	300	400	300
TOTAL available mw. peaking	900	1300	2,300

Capital Cost (x \$1,000)

	Stage I B Cost & \$/peak kw.	Stage II BB Cost & \$/peak kw.	Stage III BB Cost & \$/peak kw.
Steam & substa.	\$ 85,647=143.0	\$124,937=138.9	\$205,932=137.2
Pumped hydro & substation	41,704=139.2	44,904=112.2	101,526=127.0
Subtotal	127,351	169,891	307,458
Trans. & switching stations	60,600	115,612	180,425
TOTAL	\$107,951	\$285,503	\$487,883

Analysis of Mountain - Midwest Power Pool
System, as Planned (continued)

Annual Energy (x 1,000 kw. -hr)

Description	Stage I B		Stage II BB		Stage III BB	
	1,000 kw. -hr	Av. mw.	1,000 kw. -hr	Av. mw.	1,000 kw. -hr	Av. mw.
Gross annual energy	4,629,900	=529	6,285,900	=717	11,817,400	=1350
Less:						
Line loss						
Station use						
& losses	-603,900		-819,900		-1,541,400	
Pumping energy						
Net delivered	4,026,000	=459	5,466,000	=623	10,276,000	=1175

Peak Demand, Annual Load and Plant Factors

Description	Stage I B	Stage II BB	Stage III BB
Pool peak demand (mw)	766 mw.	1040 mw.	1955 mw.
Pool annual load factor	60%	60%	60%
Generation an. plant factor	69.0%	69.0%	69.0%

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JA 220

Analysis of Mountain - Midwest Power Pool
System, as Planned (continued)

Annual Cost (x \$1,000)

Description	Stage I B	Stage II BB	Stage III BB
Steam (5 1/2% int. inc.)	\$15,362	\$21,390	\$37,395
Pumped storage (5 1/2% int. inc.)	3,667	4,079	8,763
Subtotal	19,029	25,469	46,158
Transmission (4% int. inc.)	3,997	7,586	11,956
Total for power	23,026	33,055	58,114
Credit for water sales	- 192	- 186	-1,654
Credit for flood control	not incl.	not incl.	not incl.
Net annual cost	\$22,834	\$32,869	\$56,460

Cost Per kw-hr. (delivered), as planned.

	Stage I B	Stage II BB	Stage III BB
Cost per kw. -hr	5.67	6.01	5.49

ANALYSIS OF
MOUNTAIN - MIDWEST POWER POOL
SYSTEM, AS PLANNED

B. All Steam Generation

Total Available Megawatts

Description	Stage I B	Stage II BB	Stage III BB
Peaking mw.	900	1,300	2,300
Spare Unit	300	300	300
TOTAL	1,200	1,600	2,600

Capital Cost (x \$1,000)

Description	Stage I B	Stage II BB	Stage III BB
Steam & substa.	\$171,294	\$222,000	\$357,000
Transmission	60,600	115,612	180,425
Adj. Sweetwater plants	- 4,200	- 4,200	- 6,500
Net transmission	56,400	111,412	173,925
TOTAL	\$227,694	\$333,412	\$530,925

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JA 222

[2938]

Analysis of Mountain - Midwest Power Pool
System, As Planned (continued)

Annual Energy (x 1,000 kw. -hr)

Description	Stage I B		Stage II BB		Stage III BB	
	1,000 kw. -hr	Av. mw.	1,000 kw. -hr.	Av. mw.	1,000 kw. -hr	Av. mw.
Gross	4,428,600	=505	6,012,600	=684	11,303,600	=1,292
Line losses						
Station use & loss	- 402,600		- 546,600		-1,027,600	
Net delivered	4,026,000	=459	5,466,000	=623	10,276,000	=1175

Peak Demand, Annual Load and Plant Factors

Description	Stage I B	Stage II BB	Stage III BB
Pool annual peak demand (mw)	766	1040	1955
Pool annual load factor	60.0%	60.0%	60.0%
Generation an. plant factor	65.8%	65.8%	65.8%

Analysis of Mountain - Midwest Power Pool
System, All Steam Generation (continued)

Annual Cost (x \$1,000)

Description	Stage I B	Stage II BB	Stage III BB
Trans., adj. (4% int. inc.)	\$ 3,720	\$ 7,310	\$11,525
Steam:			
Fixed (8.42%) (5.5% int. inc.)	14,420	18,680	30,000
Int. on fuel stocks	19	25	41
No load fuel	864	1,150	1,875
O & M (fixed)	1,365	1,600	1,900
Gen. & Admin.	341	400	475
Energy fuel	5,670	7,720	14,520
O & M (variable)	735	800	950
O & M (adj.)	221	240	285
Subtotal (steam)	23,635	30,615	50,046
Adj. for hydro reactive	537	980	1,635
TOTAL	\$27,892	\$38,905	\$63,206

Cost Per kw. hr. and ratio

Description	Stage I B	Stage II BB	Stage III BB
Cost per kw. -hr (delivered)	6.93	7.12	6.15
All steam	1.22	1.18	1.12
As Planned			

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JA 224

[2940]

Exhibit 100 - 17
Sheet 1 of 15
Project No. 2289
Rocky Mountain Power Co.
Witness: Cotton

MOUNTAIN - MIDWEST POWER POOL

Comparison

Assuming steam-electric generation at Columbus, Nebraska

Serving only Nebraska and Kansas

vs.

Purchased power from Rocky Mountain Power Company,

Oak Creek Power Company and East-West Intertie, Inc.,

Serving Nebraska and Kansas

Exhibit 100-17
Sheet 2 of 15
Project No. 2289
Rocky Mountain Power Co.
Witness: Cotton

1. a. Cost of money equals 4% for generating plant at Columbus, Nebraska and step-up substation, transmission lines and switching stations along its route.
- b. Same as above except cost of money equals 5.5% for generating station at Columbus, Nebraska, and its step-up station. The cost of money for transmission and other substations is 4%.
2. Amortization period equals 35 years for steam generation and its step-up substation and 50 years for all other substations, switchyards and transmission lines.

Amortization basis equals sinking funds at interest rate.
3. Fuel cost equals 28.5¢ per million BTU at Columbus.
4. Generating plant. 2400 psi., 1000°F., 1000°F., using 300 mw. units. (Same units as for Oak Creek Plant with heat rate adjusted for lower annual plant factor. Cooling towers employed.
5. Transmission and switching added to serve same points as per Mountain-Midwest Power Pool system. (See sketches).
6. Annual load factor=60%.

[2942]

Exhibit 100 - 17
 Sheet 3 of 15
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: Cotton

MOUNTAIN - MIDWEST POWER POOL

Analysis assuming generation at Columbus, Nebraska, and serving only Nebraska and Kansas.

<u>Stage</u>	<u>Loads</u>		
	<u>IB</u>	<u>IIBB</u>	<u>IIIBB</u>
Loads (losses not inc.) mw.			
Archer	150	183	317
North Platte	346	472	835
Columbus	270	385	803
Total mw.	766	1040	1955
Annual system l. f.	60%	60%	60%
Annual Energy sold (millions kwh)	4026	5466	10,276
System losses and Station Use	403	347	1,028
Total Gen. (millions kwh)	4429	6013	11,304
Equiv. mw.	850	1150	2,150
Equiv. mw. (at 95% peak eff.)	895	1210	2,260
Units installed	<u>MW</u>	<u>MW</u>	<u>MW</u>
Used	3-300=900	4-300=1200	8-300=2400
Spare	1-300	1-300	1-300
Total units	4=1200 mw.	5=1500 mw.	9=2700 mw.

Summary

Estimated Capital Costs

<u>Schedule</u>	<u>IB</u>	<u>IIBB</u>	<u>IIIBB</u>
Steam plant (without swyd.)	\$150,000,000	\$187,500,000	\$337,500,000
Sub. and Swyds.	(7,817,450*	10,170,730*	18,242,940*
	(6,742,040	7,058,500	11,843,560
Transmission	24,618,920	49,527,500	74,146,400
Total	\$189,178,410	\$254,256,730	\$441,732,900

* = Switchyard at Powerplant

Exhibit 100-17
 Sheet 4 of 15
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: Cotton

Estimated Capital Cost of Generation (without substations)

<u>Schedule</u>	<u>IB</u>	<u>IIBB</u>	<u>IIIBB</u>
Unit Cost (2400 psi) (1000°F) (1000°F)	\$125/kw	\$125/kw	\$125/kw
Capital Cost	\$150,000,000	\$187,500,000	\$337,500,000

Estimated Cost of Substations Case IB - All 230 kv

Columbus (15,000 MVA)

Feeder bays	3 @ \$276,000 =	\$ 828,000
Transformer bays	4 @ 204,000 =	816,000
Coupler bay	1 @ 190,000 =	190,000
Transformers, 3φ, 220kv		
Gen. 300 mw	1,200mw x 3.33 =	3,996,000
Total		\$5,830,000
Contingencies (& R. O. W.) (10%)		583,000
Eng. & Overheads (15%)		961,950
Int. during constr. (6%)		442,500
Total		\$7,817,450

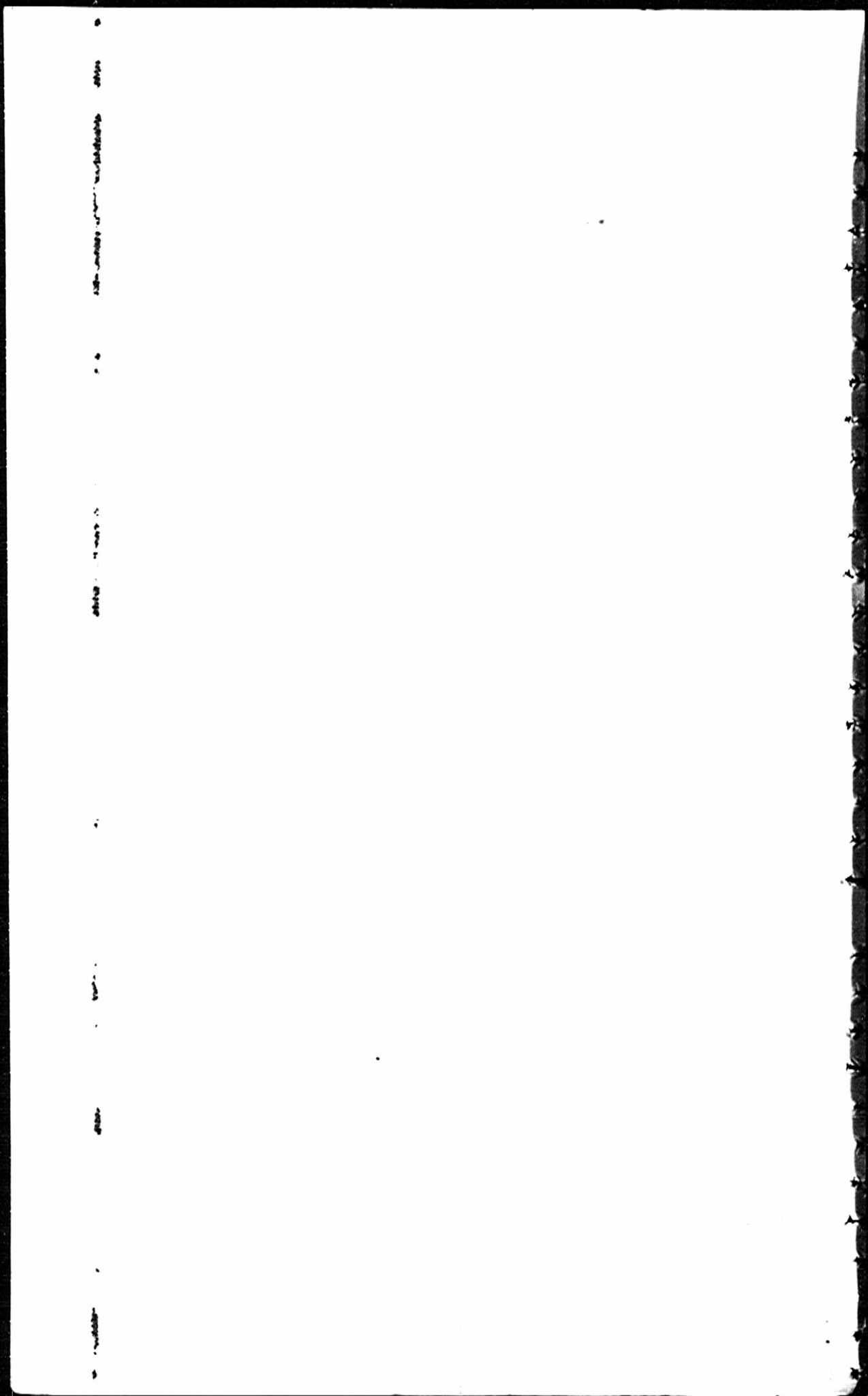
North Platte (7,500 MVA)

Feeder Bays	6 @ \$236,000 =	\$1,416,000
Transformer bays	2 @ 160,000 =	320,000
Coupler bay	1 @ 150,000 =	150,000
Transformer, 3φ, 220kv-Cond.	2 x 60,000 @ \$7 =	840,000
Synch. Conder.	2x 60,000 @ \$15 =	1,800,000
Total		\$4,526,000
Contingencies & R. O. W. (10%)		452,600
Eng. & overheads (15%)		746,790
Int. during construc. (6%)		343,520
Total		\$6,068,910

Archer

Feeder Bays	2 @ \$236,000 =	\$ 472,000
Air Switch	1 @ 30,000 =	30,000
Total		\$ 502,000
Contingencies & R. O. W. (10%)		50,200
Eng. & overheads (15%)		82,830
Int. during constr. (6%)		38,100
Total		\$ 673,130
Total		\$14,559,490

[2944]



[3297]

DEPARTMENT OF WATER RESOURCES
STATE OF NEBRASKA

Lincoln 68509

August 12, 1965

The Honorable Frank B. Morrison
Governor of the State of Nebraska
Lincoln, Nebraska

Sir:

The Nebraska Power Review Board has the honor to submit to you herewith a report of its acts and doings for the fiscal year July 1, 1964, through June 30, 1965.

We are pleased to report that in the area of retail development, a large percentage of the State is now covered by service area agreements between adjoining retail power suppliers. As a result, conflicts of interest between suppliers for service to new and existing customers have been reduced. There are 27 known area agreements to be settled, principally in the eastern portion of the State; 360 have been approved.

The Board remains dedicated to the principle of supplying the lowest-cost electrical service consistent with sound business practices. There is increasing evidence of the acceptance by Nebraska wholesale power suppliers that larger generation units are now required to achieve a low-cost power source. The Board has subscribed to this principle since its inception. However, the Board has reached the conclusion that a well-planned backbone of high-voltage transmission across Nebraska, extending in various directions to provide for interchange, is a necessary preliminary to the building of larger generation units. Effective pooling agreements with other areas are a natural result of a strong, extensive transmission grid.

[3297-3302]

Sound engineering and economic practices require an overall plan for the State. We are happy to report that a resource and power flow study, projected to 1982, is presently in progress by the Nebraska Power Industry Committee. It is assumed that close

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cooperation will be achieved between Nebraska agencies in the development of this study.

We would be pleased to furnish you with additional information and material regarding the continuing activities of the Board upon request from your office.

Respectfully submitted,
NEBRASKA POWER REVIEW
BOARD

William H. Norton, Chairman

Dan S. Jones, Jr., Secretary

[3299]

[Cover Page.]

[3300]

[Table of Contents.]

[3301]

[Present Members of the Nebraska Power Review Board.]

[3302]

SECOND ANNUAL REPORT TO THE GOVERNOR
OF THE
TRANSACTIONS OF THE BOARD

During the period covered by this report, the Nebraska Power Review Board has found it necessary to hold numerous conferences and participate in meetings with the Ne-

braska power suppliers, out-of-state regional power suppliers, the United States Department of the Interior, including the Bureau of Reclamation, the Rural Electrification Administration, the Special Power Study Committee of the Legislative Council, the Public Works Committee of the Legislature, the Nebraska Power Industry Committee, and with others involved in and informed on public power.

In addition, the Board has had a number of meetings and conferences with management officials of the Nebraska public power suppliers in an effort to compromise differences between these suppliers in order to assure adequate and low-cost electricity, and whenever possible, forestall costly litigation between suppliers. During the period covered by this report, the Board has conducted a number of hearings to establish retail service area boundaries between Nebraska suppliers. Whenever possible, there has been Board representation at all service area hearings, and the Board has sat as a body on all major transmission line application hearings. There were no

[3303]

rate disputes heard by the Board during this period.

As of this report, 360 of a total of 396 expected service area agreements have been approved by the Board. This includes those on which orders have been entered following hearings.

Major transmission facilities approved by the Board include 64 miles of 230 KV line between Columbus and Grand Island and 193 miles of 230 KV line between Stegall (near Gering) and North Platte. In the category of generation, a 200,000 KW unit to be on line in 1968 has been approved for construction by the Omaha Public Power District.

A power study showing loads and resources, the summary of which is shown in this report, has been supplied by the Nebraska Power Industry Committee. A more comprehensive study showing load flows and projecting loads to 1982 is

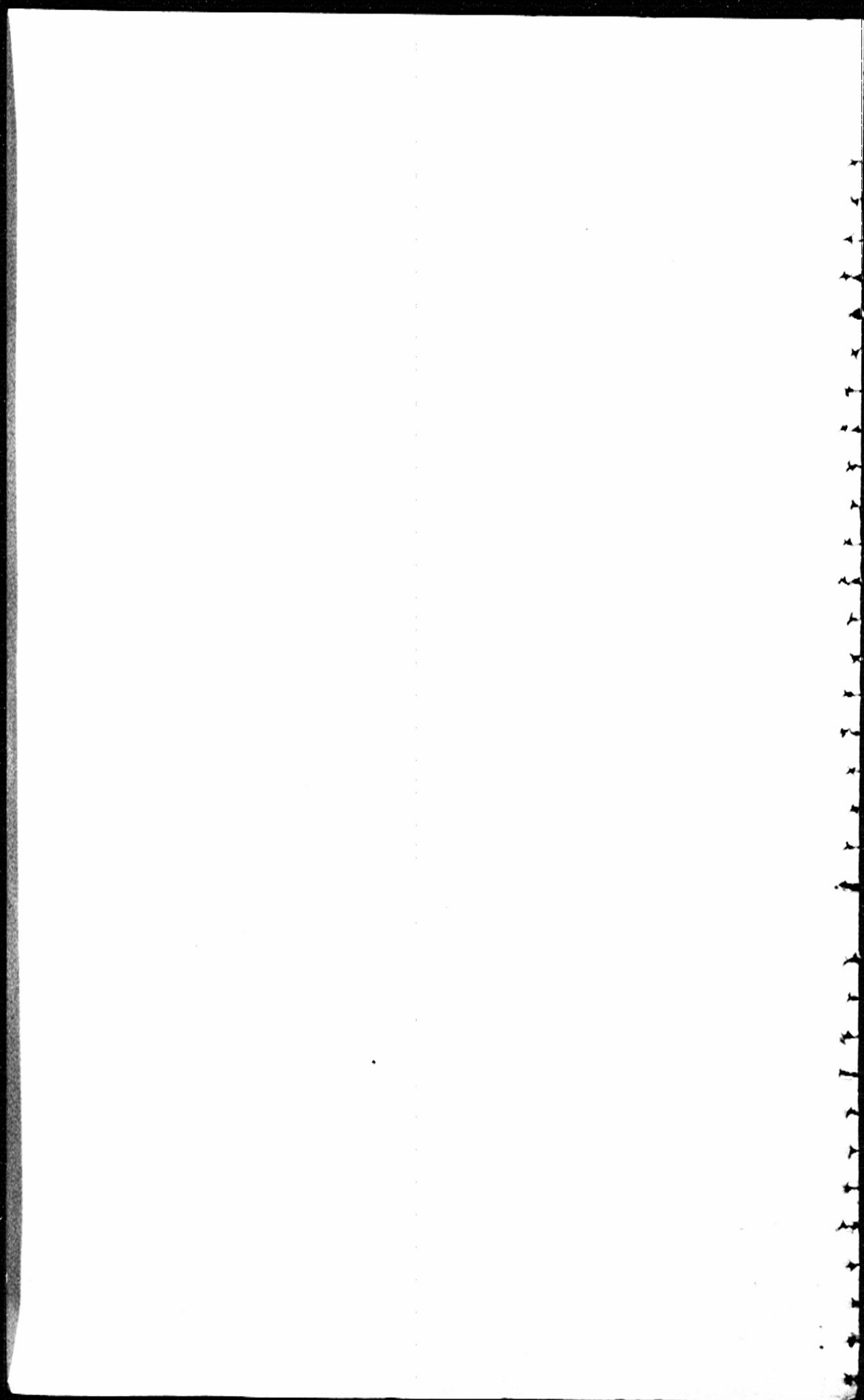
[3303-3304]

in progress by this committee. The Board is indebted to the Nebraska Power Industry Committee for undertaking these studies which will supply necessary factual information to the Board.

The financial statement herein represents a budget which the Board, through its operating experience, has found to be realistic. The Board has been able to reduce its assessments against the Nebraska power suppliers for the 1965-1966 fiscal period from 60.2 cents per thousand dollars of gross electrical revenue, which is the present year's assessment, to 47.7 cents per thousand dollars of gross electrical revenue for the coming fiscal year.

[3304]

The Board has followed a policy of keeping staff requirements to the bare minimum consistent with servicing fully and promptly any inquiries, requests and applications by suppliers. In keeping with this policy, the Board has, through consolidation of certain duties, reduced its staff from five to three permanent employees.



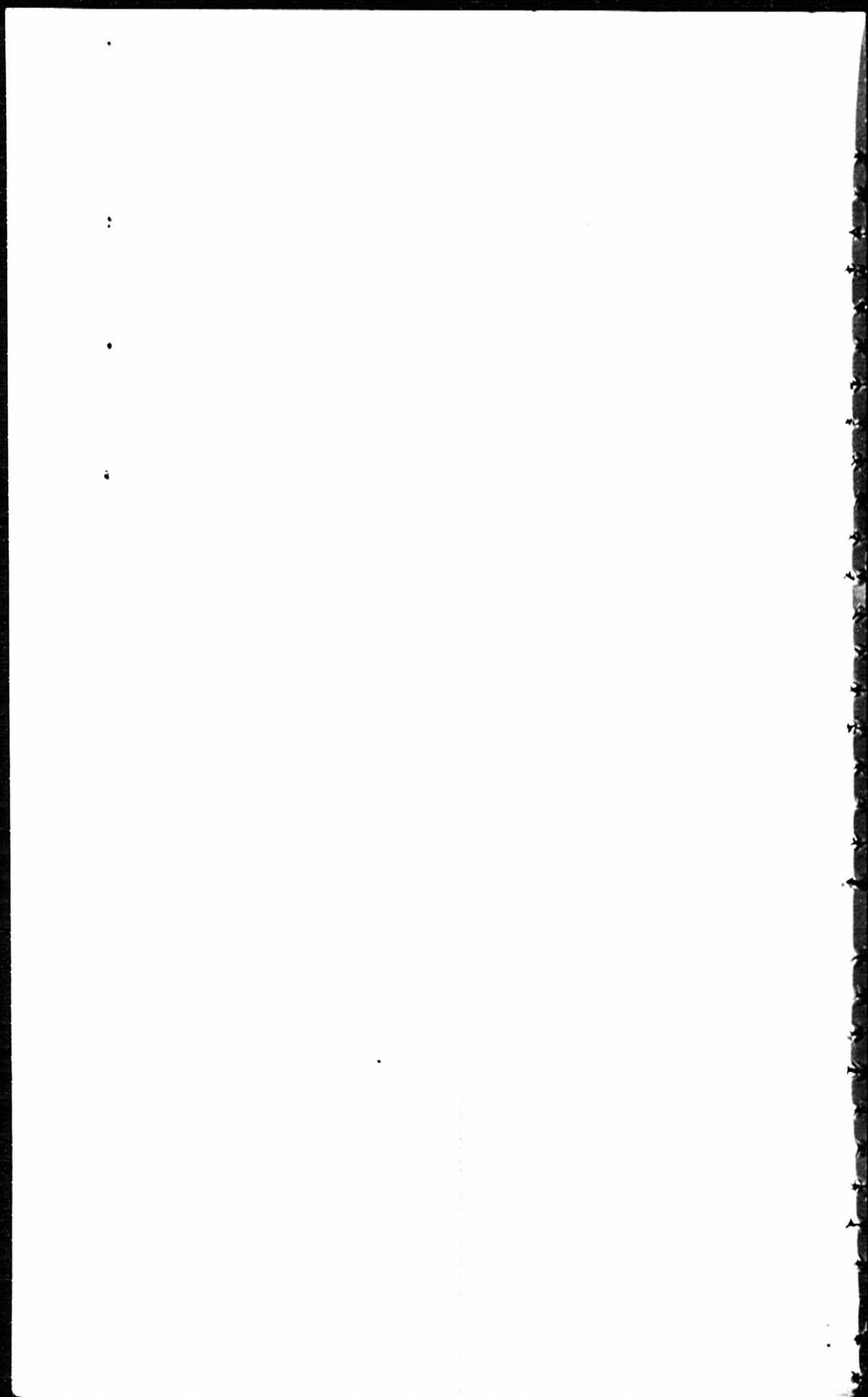
STATISTICAL SUMMARY OF BOARD ACTIVITIES
FOR PERIOD OF JULY 1, 1964, to JUNE 30, 1965

Number of Regular Meetings	38
Number of informal meetings to secure background information, compose differences between suppliers, etc.	23
Conferences with the U. S. Department of Interior	8
Conferences with the Rural Electrification Administration	4
Conferences with Regional Suppliers of Electricity	4
Meetings attended of Missouri Basin Planning Group	3
Participation in Nebraska Power Suppliers' Meetings	6
Meetings with Legislative Committees.....	2
Hearings:	
Electrical Rates	0
Line Extensions	9
Generation	1
Service Areas	10
Hearings Pending:	
Service Area Hearings	8
Line Extension Applications:	
Approved for lines over one-half mile in length	119
Received for lines one-half mile or less.....	167
Service Area Agreements:	
Total submitted this period	101
Total approved this period	308
Total to be approved	27

EXPENDITURE SUMMARY
July 1, 1964, to July 1, 1965
NEBRASKA POWER REVIEW BOARD

100.	PERSONAL SERVICES		
110.	<u>SALARIES AND WAGES</u>		
111.	Regular Employees	21,048.11	
112.	Temporary Employees	208.47	
120.	Commission and Board Per Diems	18,652.00	
130.	<u>EMPLOYEE BENEFITS</u>		
132.	Old Age and Survivors Insurance	789.66	
	Total	40,698.24	
200.	OTHER OPERATING EXPENSES		
210.	<u>OFFICE COMMUNICATION AND INSURANCE</u>		
211.	Postage	505.00	
212.	Communication Services	1,285.64	
215.	Publishing, Printing and Photography	121.30	
218.	Dues and Subscriptions	56.00	
230.	<u>RENTALS</u>		
231.	Rent of Buildings and Land	3,101.00	
240.	<u>OTHER</u>	2.25	
244.	Board and Lodging	41.00	
270.	<u>REPAIRS AND MAINTENANCE</u>		
273.	Office Furniture and Fixtures	138.28	
	Total	5,250.47	
300.	SUPPLIES AND MATERIALS		
310.	<u>OTHER</u>		
311.	Office, Drafting and Engineering	1,642.88	
336.	Janitorial and Sanitation	6.60	
	Total	1,649.48	
400.	TRAVEL		
401.	Board and Lodging	3,425.77	
402.	Commercial Fares	2,191.79	
403.	State Fares		
404.	Mileage Allowances	2,913.37	
406.	Rental	10.10	
	Total	8,541.03	
500.	CONTRACTUAL SERVICES		
520.	<u>OTHER CONTRACTUAL SERVICES</u>		
521.	Court Reporting Services	46.15	
	Total	46.15	
700.	CAPITAL EXPENDITURES		
710.	<u>REAL PROPERTY</u>		
713.	Buildings and Structures	27.95	
720.	<u>PERSONAL PROPERTY</u>		
721.	Office Furniture and Fixtures	3,176.80	
723.	Household and Institutional	188.00	
724.	Library and Museum	72.50	
	Total	3,465.25	
	GRAND TOTAL	\$59,650.62	

133061



[3307]

CONTESTED HEARINGS

Involving

TRANSMISSION LINE CONSTRUCTION

During the period covered by this report there has been a number of disputes between suppliers involving transmission line construction in Nebraska. Some of the major disputes are summarized briefly as follows:

1.

PRB-427, 530, 532, and 533, which were applications of Loup River Public Power District, Norris Public Power District, Consumers Public Power District, and the City of Beatrice, to construct transmission lines to serve the Phillips Petroleum Company's fertilizer manufacturing plant, a new Nebraska industry, in Gage County, Nebraska.

In this matter the above four suppliers all applied for authority to serve the Phillips Petroleum Company with electricity. All applicants protested the other applications. All applications were consolidated for hearing. A hearing was had and extensive evidence and testimony were adduced. Among the points established at the hearing was the fact that Norris and Loup River Public Power Districts offered the lowest rates of the four applicants; these rates were identical. It was also established that Loup River Public Power District had no retail customers in Gage County, Nebraska.

The Board's ruling was that the application of Norris

[3308]

Public Power District would best serve the public convenience and necessity and could most economically and feasibly supply the electric service resulting from the proposed construction without unnecessary duplication of facilities and operations. The application of Norris Public Power District was approved and the others denied.

[3308-3309]

2.

PRB-433, in which matter the Loup River Public Power District applied to construct a 230 KV transmission line with related facilities between Grand Island and Columbus, Nebraska. A protest was filed by the Nebraska Electric Generation and Transmission Cooperative, Inc. The Norris Public Power District also filed pleadings in the matter. A hearing was had and evidence was adduced which indicated that a power deficiency was anticipated in parts of the Nebraska Public Power System during the summer peak load period of 1965, and that the load center of the Nebraska Public Power System was in the vicinity of Grand Island, Nebraska. Loup River Public Power District has an existing 230 KV transmission line extending from Fort Randall, South Dakota, to Columbus, Nebraska, and the proposed line to Grand Island would permit additional power to be carried into the Nebraska load center as well as fortify the Nebraska Public Power System's transmission grid. The evidence also indicated that the proposed line could be constructed and in service in time to supply the 1965 summer peak demand at the Nebraska load center.

The Board approved the Loup application and overruled the protests thereto.

[3309]

PRB-321 was the application of the Nebraska Electric Generation and Transmission Cooperative, Inc. (G and T) for authority to construct 154 miles of 230 KV transmission line from Fort Randall, South Dakota, to Grand Island, Nebraska.

The Nebraska G and T consists of 23 member rural public power districts and membership associations which supply 69,566 farms and commercial customers in the rural areas of the eastern two-thirds of Nebraska. The ultimate purpose of the Nebraska G and T's application would be the same as that of the previously mentioned application, that is, to bring additional electricity to the Nebraska load

center in the Grand Island vicinity. A protest was filed by the Loup River Public Power District, the Platte Valley Public Power and Irrigation District, and pleadings were also filed by the Consumers Public Power District. A hearing was held at which considerable testimony and other evidence were adduced which indicated that an additional interconnection at Fort Randall was not desirable at this time and that there was no foreseeable lack of carrying capacity into the Nebraska grid system before 1968 in an amount sufficient to justify the expenditure of the estimated cost of construction of the proposed line which was stated to be approximately \$5,300,000. It was also clearly established that the proposed line would not be of assistance in providing additional power to the Grand Island load center in time to alleviate the 1965-1966 summer peak load demands.

Therefore, the application was not approved, and a ruling on this application has been deferred.

[3310]

4.

PRB-545, involved the applications of Eastern Nebraska Public Power District and the City of Auburn, Nebraska, for authority to construct a transmission line to serve the City of Peru at wholesale. Both entities protested the other's application. Both applications were consolidated for hearing, and a hearing was held at which time the Board of Education of State Normal Schools of the State of Nebraska intervened. From the evidence adduced the Board found that the City of Auburn's proposed line would extend through territory presently served by Eastern Nebraska Public Power District and that the City of Peru, Nebraska, and the area surrounding it are presently being served with electricity by three public power agencies, which are the City of Peru, Nebraska City, and Eastern Nebraska Public Power District, and that service in this area by a fourth public power agency would not be in the public interest. It was also established that Eastern Nebraska proposed a 69

[3310-3311]

KV transmission line to provide the service required, whereas Auburn proposed a 12.5 KV transmission line. The evidence indicated that Eastern Nebraska's proposed 69 KV line would serve the additional purpose of strengthening its existing system and improving its service to its farm customers in the Peru area, and that eventually such a line would have to be built whether or not this application were approved.

After consideration of extensive evidence, the Board found that the Eastern Nebraska Public Power District's

[3311]

application would serve the public convenience and necessity and that the applicant could most economically and feasibly supply the electric service resulting from the proposed construction without unnecessary duplication of facilities or operations. The Board's order approved the application of Eastern Nebraska Public Power District and denied the application of the City of Auburn.

5.

PRB-641, which was the application of Tri State Generation and Transmission Association, Inc., headquartered in Denver, Colorado, for authority to construct 75 miles of 230 KV transmission line from Stegall to Sidney which would serve as an interconnection between the United States Bureau of Reclamation's facilities and the Nebraska Public Power System's grid. The total estimated cost was \$3,655,000. A protest to this application was filed by the Loup River Public Power District and the Platte Valley Public Power and Irrigation District, and consents and waivers to the proposed facilities were filed by a number of public power districts in Nebraska. A hearing was held, evidence was adduced and received from which the Board found that the application of Tri State G and T would serve the public convenience and necessity and that the applicant could most economically and feasibly supply the electric service resulting from the proposed construction without unnecessary duplication of facilities and operations.

[3313-3314]

[3313]

that both applicants could properly maintain and service the proposed line and that both parties were capable of adequately financing the facilities. The evidence also disclosed that either applicant could construct the facilities at approximately the same cost. The testimony of Consumers Public Power District indicated that the facility could be in operation by the summer of 1966, and the record disclosed the need for, and the desirability of, a 230 KV connection between the present high-voltage line in the eastern two-thirds of the State and the 230 KV facility terminating at Sidney, Nebraska. The evidence further disclosed that the Nebraska Public Power System, of which Loup River Public Power District is a partner, will not allow its customers to use this facility to carry power from other power suppliers under presently existing contractual arrangements. From all the evidence adduced the Board found that ownership by Consumers of this facility would result in a more fair, equitable, and non-discriminatory distribution of benefits among the actual electric users in the State of Nebraska than that which would result from ownership of the facilities by Loup River Public Power District.

The Board's order approved the Consumers Public Power District's application and overruled the protest thereto and denied the application of Loup River Public Power District and the alternative application of the Nebraska Electric G and T.

7.

PRB-641 and 659, which were applications by the City of Lexington Nebraska, and the Consumers Public Power District

[3314]

for authority to construct transmission facilities in Dawson County, Nebraska, to be utilized to serve electrical customers in the City of Lexington, Nebraska. These were separate applications and were not consolidated for hearing;

The Board's order approved the application of Tri State G and T and overruled the protests of Loup River Public Power

[3312]

District and Platte Valley Public Power and Irrigation District.

PRB-603 and 642, which were the applications by Consumers Public Power District and the Loup River Public Power District, for authority to construct a 230 KV transmission facility extending from Sidney to North Platte, Nebraska.

In this matter Consumers Public Power District applied for authority to construct a transmission facility in Kimball, Deuel, Keith and Lincoln Counties, Nebraska, which would connect with the facility terminating at Sidney to be constructed by Tri State G and T. The entire facility would provide an additional interconnection to the West, thus making available to Nebraska an additional outside source of electricity. This application was protested by the Loup River Public Power District. A hearing was had at which time the Loup River Public Power District filed a cross-application to construct the facility. A protest to the Loup application was filed by the Nebraska G and T which was in part an alternative application to construct the same facilities. Consents and waivers to the proposed construction by Consumers Public Power District were filed by a number of Nebraska power suppliers.

The evidence disclosed the following: that Consumers Public Power District serves at retail a number of towns west of North Platte and serves at wholesale and has crews and equipment in the area of North Platte. Loup served no towns at retail west of North Platte, nor did it have electrical facilities west of Lincoln County, Nebraska. The evidence disclosed

however, the applications involved alternatives for facilities which would serve the same purpose and are, therefore, discussed together.

The City of Lexington's application was filed for authority to build six miles of 34.5 KV transmission line which would extend from the Nebraska Public Power System's substation to the City of Lexington itself. This application was protested by the Consumers Public Power District.

The Consumers Public Power District's application was filed for authority to construct 1.6 miles of line which would provide service to existing loads and customers of the Consumers District over the existing lines in the Elm Creek-Lexington area and which would be served from the existing facilities in the Nebraska Public Power System's substation. The City of Lexington filed a protest to this application.

From the evidence adduced at the respective hearings on the two applications, the Board found that neither of the two applications were necessary *at this time*, that no appreciable savings would result from the construction of these facilities as applied for by the City of Lexington, and the evidence further disclosed that the peak electrical demand of the City of Lexington would be reached during the months of July or August of 1965. The testimony and evidence disclosed that it was unlikely that the facilities, whether constructed by either

[3315]

applicant, could be constructed in time to alleviate the 1965 summer peak load demand of the City of Lexington. The Board, in its respective orders, found that neither application would serve the public convenience and necessity nor provide the electric service resulting from the proposed construction without unnecessary duplication of facilities or operations. The Board's order in regard to the City of Lexington specifically provided that the City could apply at a future time for authority to construct the facility, and upon

[3315-3317]

the application and a showing to the Board a need for such a facility, the matter would be reconsidered at that time and an appropriate order entered.

The Board's respective orders denied the application of the City of Lexington and sustained the protest thereto by the Consumers Public Power District, and denied the application of Consumers Public Power District and sustained the protest thereto filed by the City of Lexington.

In one instance, a controversy arose between two suppliers as to which should serve a new industrial customer. At the request of the respective parties and their counsel, the Board made certain specific recommendations, based upon information and data supplied to it by the parties, and a formal hearing in the matter was avoided. The parties later followed the Board's recommendations as to which supplier should serve the new electrical customer and a lengthy and expensive dispute and hearing was avoided.

[3316]

Service Area Disputes

During the current period there has been a number of individual cases where the parties to a service area dispute have been able to resolve their differences after informal consultations with the Board, management officials, and counsel, and several formal service area hearings have been thereby avoided when the parties were able to enter into a voluntary service area agreement.

[3317]

[Cover Page.]

NEBRASKA POWER REVIEW BOARD

Article 10

70-1001. Power Review Board; declaration of policy. In order to provide the citizens of the state with adequate electric service at as low overall cost as possible, consistent with sound business practices, it is the policy of this state to avoid and eliminate conflict and competition between public power districts, public power and irrigation districts, municipalities, electric membership associations, and cooperatives in furnishing electric energy to retail customers, to avoid and eliminate the duplication of facilities and resources which result therefrom, and to facilitate the settlement of rate disputes between suppliers of electricity.

Source: Laws 1963, c. 397, § 1.

70-1002. Power Review Board; suppliers of electricity; agreements; submission to board. (1) All suppliers of electricity, including public power districts, public power and irrigation districts, municipalities, electric membership associations, and cooperatives, serving customers at retail in adjoining service areas shall have the authority to enter into written agreements with each other specifying either the service area or customers each shall serve with electric energy. Before such agreements shall be effective, except agreements referred to in subsection (2) of this section, they shall be submitted to and approved by the Nebraska Power Review Board created by section 70-1003. In the event that such suppliers fail to consummate such agreements prior to July 1, 1964, except agreements referred to in subsection (2) of this section, the matter shall be referred to the Nebraska Power Review Board created by section 70-1003.

(2) When two or more suppliers serve the same municipality at retail, such agreements shall specify the service areas within such municipality which each supplier is to serve.

[3318-3319]

(3) It is declared to be the purpose of this section to promote and encourage the making of such agreements. Such agreements may be amended by the parties thereto

[3319]

at any time, and, except agreements referred to in subsection (2) of this section, shall require the approval of the Nebraska Power Review Board, and they shall be submitted to the board for amendment upon the transfer of ownership or control of the facilities serving a service area.

Source: Laws 1963, c. 397, § 2.

70-1003. Power Review Board; establishment; composition; appointment; term; compensation; jurisdiction; decisions. There is hereby established, within the Department of Water Resources, the Nebraska Power Review Board to consist of five members, one of whom shall be an engineer, one an attorney, one an accountant, and two lay persons. No person who is or who has within four years preceding his appointment been either a director, officer, or employee of any electric utility or an elective state officer shall be eligible for membership on the board. Members of the board shall be appointed by the Governor subject to the approval of the Legislature. Members of the board first appointed shall be appointed within thirty days of May 16, 1963. Of the members initially appointed, two shall serve until January 1, 1965, two until January 1, 1966, and one until January 1, 1967. Upon expiration of such terms, the successors shall be appointed for terms of four years. No member of the board shall serve more than two consecutive terms. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term. Each member of the board shall receive fifty dollars per day for each day actually and necessarily engaged in the performance of his duties, but not to exceed five thousand dollars in any one year, and shall be reimbursed for his actual and necessary expenses

while so engaged. The board shall have jurisdiction as provided in Sections 70-1001 to 70-1020.

The board shall meet promptly after its members have been appointed. They shall elect from their members a chairman and a vice-chairman.

The Director of Water Resources shall serve as secretary of the board. The Department of Water Resources shall maintain all files and records of the Board, issue all notices required by the provisions of sections 70-1001 to 70-1020, and otherwise perform such duties as the board may direct.

[3320]

Expenses incurred by the board in connection with any proceeding before it shall be paid from the budget of the Department of Water Resources.

Decisions of the board shall require the approval of a majority of the members of the board.

Source: Laws 1963, c. 397, § 3.

70-1004. Power Review Board; suppliers of electricity; filing of maps and service area statements. On or before July 1, 1964, each supplier which has become a party to an agreement under the provisions of section 70-1002 shall file with the secretary of the board a suitable maps or maps, in such form as the board shall prescribe, showing either the service area or customers to be served. Whenever any changes occur in the service area, new maps shall be filed. Each supplier in the state which fails to file a map or maps on or before July 1, 1964, showing its service area or customers to be served as established by agreement shall file a statement with the secretary showing the service area and customers actually served by it, what it claims to be its service area, stating the reason it has not entered into agreements with suppliers in adjoining service areas and if a dispute exists as to furnishing service to any service area, the nature and extent thereof. This section shall not apply to agreements referred to in subsection (2) of section 70-1002.

[3320-3321]

Source: Laws 1963, c. 397, § 4.

70-1005. Power Review Board; service area; application to establish; notice of hearing. Any supplier may at any time on or after July 1, 1964, apply to the board to establish its service area. In such case and in all cases where agreements have not been entered into, including cases arising under section 70-1008, the secretary shall give written notice to the parties involved citing them to appear at a time, not less than thirty days thereafter, and at a place specified in the notice for a hearing upon the matter of establishing the service areas concerned in the notice. The provisions of this section shall not apply to service within the corporate limits of any municipality.

Source: Laws 1963, c. 397, § 5.

[3321]

70-1006. Power Review Board; hearings; continuance; rules of procedure. At the hearing the board shall hear testimony and receive other evidence relating to the matter and may continue the hearing from time to time. The board shall adopt such rules of procedure as are advisable and in conformity with law.

Source: Laws 1963, c. 397, § 6.

70-1007. Power Review Board; orders; policy considerations. After the hearing, the board shall make an order establishing the service areas in the matter covered by the notice. In determining any such matter, the board shall seek to carry out the policy stated in section 70-1001. It shall give such consideration as is appropriate in each case to the following:

- (1) The supplier best able to supply the load required;
- (2) The most logical future supplier of the area;
- (3) The desires of the supplier with respect to loads and service areas it wishes to serve;

- (4) The ability to provide service at costs comparable to other suppliers in the service area; and
- (5) The ability of the supplier to cope with the problems of expanding loads and increased costs.

Source: Laws 1963, c. 397, § 7.

70-1008. Power Review Board; rights of municipalities; service within zoning areas; rights of customers outside service area. In the absence of an agreement between the suppliers affected and notwithstanding the provisions of subdivisions (1) to (5) of section 70-1007:

(1) In the zoning area surrounding any municipality and outside the corporate limits thereof, if such municipality operates a retail system, it shall have the right to serve such zoning area at retail except as to such customers as are presently served by other

[3322]

suppliers. Such a municipality may acquire the facilities of other suppliers in such zoning area by negotiation.

(2) In determining the service area of a municipally-owned electric system, there shall be included, as a maximum, the corporate area of the municipality, the zoning area outside the corporate limits of such municipality, and the area beyond the zoning area which is presently being served by such municipality, including not more than the area one half mile on each side of the line presently used by such municipality to serve its existing customers, except for customers presently served by other suppliers. When any new customer outside the corporate limits of any municipality and outside the zoning limits surrounding such municipality locates closer to electric lines owned by other suppliers in the municipal service area as provided for in this section, in case of disagreement, the question of which supplier shall serve such new customer shall be submitted to the Nebraska Pow-

[3322-3323]

er Review Board for determination under the standards set forth in section 70-1007.

Source: Laws 1963, c. 397, § 8.

70-1009. Power Review Board; suppliers; preference to municipally owned. If two or more suppliers, one of which is municipally owned, serve the same municipality owned, serve the same municipality at retail, the municipally-owned supplier shall have first preference to acquire the service area, customers, and facilities of any other supplier providing service at retail within such part of the zoning area surrounding such municipality as becomes annexed to such municipality.

Source: Laws 1963, c. 397, § 9.

70-1010. Power Review Board; modification of service areas; procedure; suppliers agreements. The board shall have authority upon application by a supplier at any time to modify service areas or customers to be served as previously established. The same procedures as to notice, hearing, and decision shall be followed as in the case of an original application. Suppliers shall have authority by agreement to change service areas or customers to be served with the approval of the board. This section shall not apply to agreements referred to Subsection 70-1002.

[3323]

Source: Laws 1963, c. 397, § 10.

70-1011. Power Review Board; suppliers; service outside area; application for permission; approval, when granted. Except by agreement of the suppliers involved, no supplier shall offer electric service to additional ultimate users outside its service area or construct a new electric line or extend an existing line into the service area of another supplier for the purpose of furnishing service to ultimate users therein without first applying to the board and receiving approval thereof, after due notice and hearing under rules and

[3323-3324]

regulations of the board. Such approval shall be granted only if the board finds that the customer or customers proposed to be served cannot or will not be furnished adequate electric service by the supplier in whose service area the customer is located, or that the provision thereof by such supplier would involve wasteful and unwarranted duplication of facilities. This section shall not apply to agreements referred to in subsection (2) of section 70-1002.

Source: Laws 1963, c. 397, § 11.

70-1012. Power Review Board; electric generation facilities and transmission lines; general authority; approval, when not required. Before any electric generation facilities or any transmission lines or related facilities carrying more than seven hundred volts are constructed by any supplier other than a municipality within its corporate limits and its zoning area outside such corporate limits, an application, filed with the board and containing such information as the board shall prescribe, shall be approved by the board; Provided, that such approval shall not be required for the construction of transmission line extension or related facilities within a supplier's own service area or for the construction of a line not exceeding one half mile outside its own service area when all owners of electric lines located within one half mile of the extension consent thereto in writing and such consents are filed with the board; and provided further, that such approval shall not be required of any municipal supplier for the construction or use within the county containing that municipality of any electric generation facility or any transmission lines connecting such generation facilities

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with the service area of such a municipal supplier where such facilities shall not be used to serve at retail any customers or service area not already within the service area of such municipality.

Source: Laws 1963, c. 397, § 12.

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70-1013. Power Review Board; electric generation facilities and transmission lines; application; fix time and place of hearing; appearances; objections; amendments. Upon application being filed under section 70-1012, the board shall fix a time and place for hearing and shall give ten days' notice by mail to such alternate power suppliers as it deems to be affected by the application. The hearing shall be had within thirty days and the board shall give its decision within ten days after the conclusion of the hearing. Any parties interested may appear, file objections, and offer evidence: Provided, the board may grant the application without notice or hearing, upon the filing of such waivers as it may require, if in its judgment the finding required by section 70-1014 can be made without a hearing. Such hearing shall be considered as provided in section 70-1006. The board may allow amendments to the application, in the interests of justice.

Source: Laws 1963, c. 397, § 13.

70-1014; Power Review Board; electric generation facilities and transmission lines; hearings; approval on denial of application; findings required. After hearing, the board shall have authority to approve or deny the application. Before approval of an application, the board shall find that the application will serve the public convenience and necessity, and that the applicant can most economically and feasibly supply the electric service resulting from the proposed construction, without unnecessary duplication of facilities or operations.

Source: Laws 1963, c 397, § 14.

70-1015. Power Review Board; electric generation facilities and transmission lines; unauthorized construction; injunction. If any generation facilities or any transmission lines or related facilities are constructed or customers served in violation of the provisions of sections 70-1001 to 70-1020, such lines

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or facilities shall not be used, and the use of such facilities or service of such customers shall be enjoined, until the provisions of sections 70-1001 to 70-1020 have been complied with, in an action brought by the board in the name of the State of Nebraska.

Source: Laws 1963, c. 397, § 15.

70-1016. Power Review Board; appeals from orders of; procedure. An appeal may be taken to the Supreme Court from any final action of the board in the same manner as appeals are taken from decisions of the State Railway Commission.

Source: Laws 1963, c. 397, § 16.

70-1017. Power Review Board; suppliers; duty to furnish service; disputes submitted to board. Any supplier of electricity at retail shall furnish service, upon application, to any applicant within the service area of such supplier. If the supplier and the applicant cannot agree upon any of the terms under which service is to be furnished, or if the applicant alleges that the supplier is not treating all customers and applicants fairly and without discrimination, the matter shall be submitted to the board for hearing and determination.

Source: Laws 1963, c. 397, § 17.

70-1018. Power Review Board; suppliers; disputes over rates; submission to board. In the event of any dispute between suppliers concerning rates for service between such suppliers which cannot be settled by negotiations, the dispute shall be submitted to the board. The board may intervene in any such dispute on its own motion. Upon the submission of such dispute or the board's decision to intervene, the board shall set a time and place for hearing thereon and give notice as provided in section 70-1013. Following such hearing the board shall make its recommendations for the settlement of such dispute, which recommendations shall be advisory only.

[3325-3326]

Source: Laws 1963, c. 397, § 18.

70-1019. Power Review Board; proceedings; compel attendance of witnesses; production of documents;

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contempt proceedings authorized. In any proceeding had before it under the provisions of sections 70-1001 to 70-1020, the board shall have authority, by subpoena, to compel the attendance of witnesses, and the production of any books, papers, records, accounts, or other documents which may be necessary to assist in a determination of any matter pending before the board. If any person shall disobey any such subpoena or refuse to testify concerning any matter regarding which he may be lawfully interrogated, the district court of Lancaster County, upon application by the board, may compel obedience by proceedings for contempt as in the case of disobedience to the requirements of a subpoena issued from such court or a refusal to testify therein.

Source: Laws 1963, c. 397, § 19.

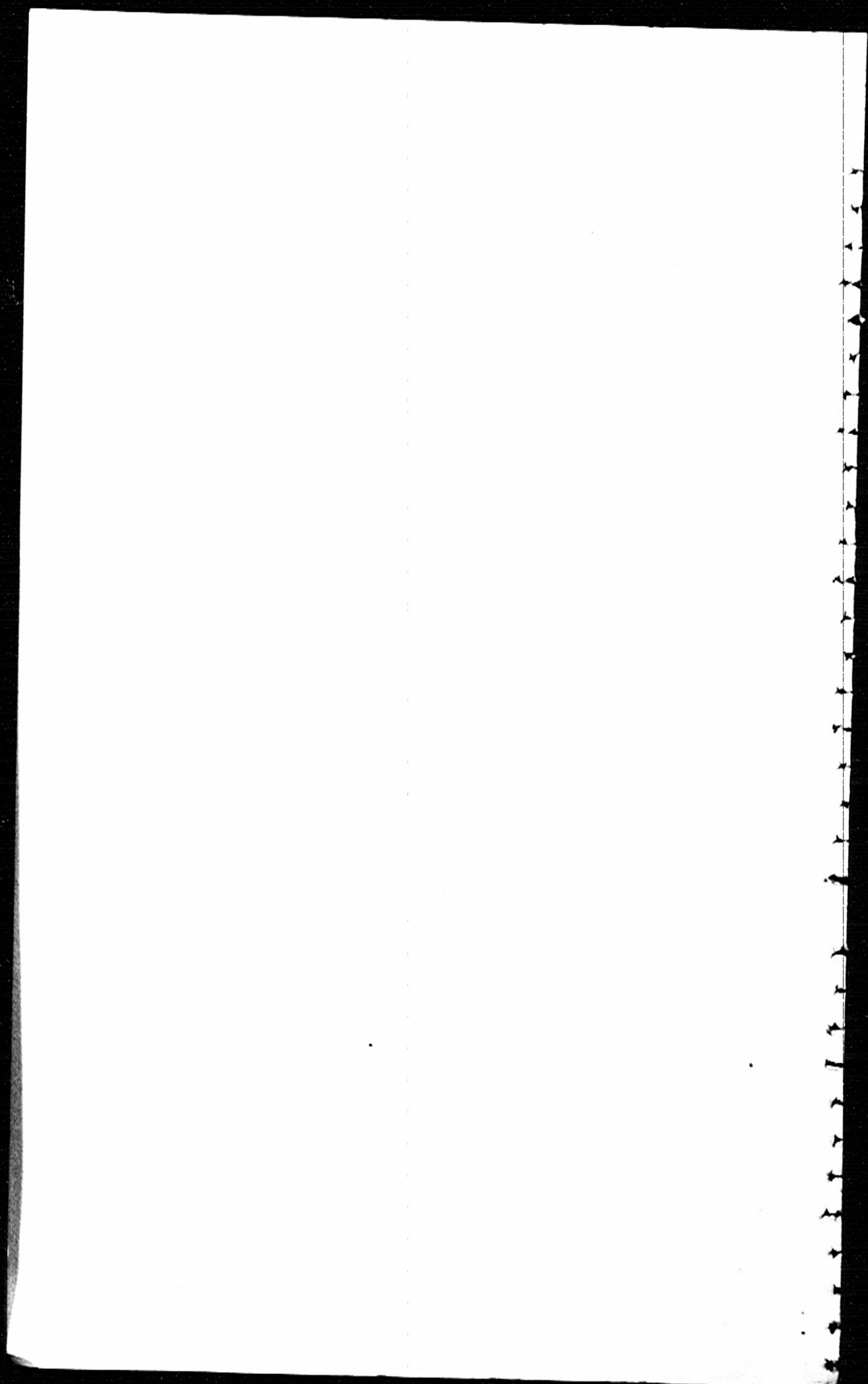
70-1020. Power Review Board; expense; appropriation by Legislature; assessments levied against public electric agencies; apportionment of expense; collection. In order to defray the expenses of the Nebraska Power Review Board in excess of the amounts appropriated by the Legislature, there shall be imposed upon each public power district, public power and irrigation district, electric membership association, electric cooperative company, and municipality having an electric distribution system or generation and distribution system, an assessment each fiscal year in such sum as shall be determined by the board and approved by the Governor. The total of such assessments shall not exceed the expenses of the board which may reasonably be anticipated for the fiscal year for which assessment is made, and shall be apportioned among the various agencies in proportion to their gross income in the preceding calendar year. The board shall determine and certify such assessment to each

supplier on or before June 1 of each year, and such assessment shall be payable on or before July 1 of each year. Any assessment not paid when due shall draw interest at the rate of six per cent per year until paid. The proceeds of such assessment shall be transmitted as received to the State Treasurer for deposit in the state treasury to the credit of the Nebraska Power Review Fund, which is hereby created and which shall be used solely to administer the provisions of sections 70-1001 to 70-1020.

Source: Laws 1963, c. 397, § 20.

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ROSTER OF POWER SUPPLIERS IN NEBRASKA



ROSTER OF POWER SUPPLIERS IN NEBRASKA

<u>Wholesale Power Suppliers</u>	<u>Manager</u>	<u>Secretary</u>	<u>City</u>	<u>Assessment</u>
Central Nebraska Public Power and Irrigation District	Jack W. Boyd	Jack W. Boyd	Holdrege	\$ 2,773.94
*Consumers Public Power District	Durwood W. Hill	Guy L. Cooper	Columbus	14,914.28
Loup River Public Power District	John B. Preston	O. N. Allen	Columbus	6,503.57
*Omaha Public Power District	E. E. Schwalm	Richard Sievers	Omaha	20,347.23
Platte Valley Public Power and Irrigation District	Homer Loutzenheiser	Doris K. Swanson	North Platte	4,921.55
*Indicates Wholesale and Retail				
<u>G and T Cooperatives</u>				
Nebraska Electric G and T Cooperative, Inc.	Dil Blatchford		Columbus	50.56
Tri-State G and T Association	Wendell J. Garwood		Denver, Colorado	
<u>Rural Power Suppliers</u>				
Burt County Public Power District	Jesse Rogers		Tekamah	324.56
Butler County Rural Public Power District	Otto J. Kriz	V. A. Bartunek	David City	260.56
Cedar-Knox County Rural Public Power District	Harold Martindale	Roy T. Johnsen	Hartington	346.58
Cherry-Todd Electric Coop., Inc.	J. N. Peterson	Otho Kime	Mission, S. D.	32.08
Chimney Rock Public Power District	Harry Pappas	Harold C. Richards	Bayard	123.24

ROSTER OF POWER SUPPLIERS IN NEBRASKA (Cont.)

<u>Rural Power Suppliers</u>	<u>Manager</u>	<u>Secretary</u>	<u>City</u>	<u>Assessment</u>
Cornhusker Public Power District	W. W. Schutz	Leo K. Hall	Columbus	660.73
Cuming County Public Power District	Robert Mace	J. R. Watson	West Point	311.60
Custer Public Power District	Dick Wilkerson	John H. Evans	Broken Bow	564.92
Dawson County Public Power District	Edward Koza	Elbert H. Smith	Lexington	1,087.51
Eastern Nebraska Public Power District	Irvin H. Smith	Lloyd J. Marti	Syracuse	992.58
Elkhorn Rural Public Power District	LeRoy Hansen	C. H. Rouse	Battle Creek	343.86
Franklin County Rural Public Power District	Darwin Gates		Franklin	122.94
Gering Valley Rural Public Power District	Art C. Updike	Leland Buehler	Gering	34.80
Hi-Line Electric Association	F. W. Cooper		Holyoke, Colorado	56.71
Howard-Greeley Rural Public Power District	James Olsen	Charles Dobry	St. Paul	236.17
Imperial Public Power District	Marvin Athey	Willard M. Rouze	Imperial	41.65
K.B.R. Rural Public Power District	William Schiessler	Kenneth Henderson	Ainsworth	204.38
LaCreek Electric Association, Inc.	Harry F. Curry		Martin, S. D.	16.51
Loup Valleys Rural Public Power District	Wilbert J. Calvin	Clifford Goff	Ord	214.81
McCook Public Power District	Joe E. Horner	George F. Moss	McCook	448.92
Midwest Electric Membership Corporation	Harold W. Hermann	Ray Goedert	Grant	288.04
Niobrara Electric Association, Inc.	Arthur J. Schnose		Lusk, Wyoming	53.47

ROSTER OF POWER SUPPLIERS IN NEBRASKA (cont.)

<u>Rural Power Suppliers</u>	<u>Manager</u>	<u>Secretary</u>	<u>City</u>	<u>Assessment</u>
Niobrara Valley Electric Membership Corporation	Ed Wilson	Carroll O'Neill	O'Neill	\$ 274.37
Norris Public Power District	Lester Trussell		Beatrice	867.53
North Central Nebraska Public Power District	Peter E. Thomassen	E. Ray Reed	Creighton	263.95
Northeast Nebraska Rural Public Power District	Cecil C. Plummer		Emerson	232.78
Northwest Rural Public Power District	Donald Armstrong	Glen M. Kendrick	Hay Springs	215.82
Panhandle Rural Membership Association	Paul Phaneuf	Harry Coble	Alliance	294.69
Polk County Rural Public Power District	W. L. Anderson	M. A. Mills, Jr.	Stromsburg	236.89
Roosevelt Public Power District	Howard F. Moranville	A. L. Moon	Mitchell	98.51
Rural Electric Company	B. E. Lyons		Pine Bluffs, Wyo.	238.93
Seward County Rural Public Power District	Elmer C. Bentzinger	Harold F. Sieck	Seward	151.53
South Central Public Power District	Yale A. Meyer	W. Wray Wehrman	Nelson	311.85
Southwest Public Power District	Roy V. Miller	Power E. Rann	Palisade	412.28
Southern Nebraska Rural Public Power District	Arnold T. Ericksen		Grand Island	1,293.89
Stanton County Public Power District	Fred J. Ball	Philip Smejkal	Stanton	143.94
Twin Valleys Public Power District	J. W. McLane	Allen Harlan	Cambridge	274.84
Wayne County Public Power District	Calvin W. Comstock	Stanley Hansen	Wayne	248.46
Wheatbelt Public Power District	Charles E. Ham	Arnold Peeks	Sidney	463.77

ROSTER OF POWER SUPPLIERS IN NEBRASKA (Cont.)

<u>Rural Power Suppliers</u>	<u>Manager</u>	<u>Secretary</u>	<u>City</u>	<u>Assessment</u>
Wyrulec	Ivan Whipple		Lingle, Wyo.	\$ 68.25
York County Rural Public Power District	Roy A. Speece	Robert M. Schelkopf	York	383.80

Privately-Owned Cooperatives

Eden Valley Light Company	LeRoy Jensen, President		Plainview
Plainview Hi-View High-line Company	Wilber E. Spatz, President		Plainview

Municipal Power Suppliers

<u>Generation and Distribution</u>	<u>Utility Manager</u>	<u>City or Village Clerk</u>	<u>Assessment</u>
Alliance, City of	R. W. Laing (City Mgr)		367.19
Alma, City of	Raymond Platt	A. L. Schulke	53.35
Ansley, City of		John W. Parks	24.83
Arnold, Village of		R. R. Brown	40.88
Auburn, City of	Lambert Blecha		189.82
Blair, City of	W. H. Andrews	L. W. Svendgaard	181.10
Blue Hill, Village of		Russell W. Willems	33.33
Broken Bow, City of	L. E. Clark	Paul W. Perston	151.04
Burwell, City of		Roy J. Stevens	59.37
Callaway, Village of		S. J. Rourke	36.89
Cambridge, City of		Harold L. Lavrrach	50.75
Campbell, Village of		William H. Vankirk	17.46
Chappell, City of		Mrs. Lola Brown	51.30
Crete, City of		Glen Baker	150.57
Curtis, City of	Gordon K. Peterson	Betty J. Shirley	57.27
David City, City of	Marion E. Wright	Carol Grubaugh	93.93
Emerson, City of		E. W. Jensen	32.45
Fairbury, City of	Glen Beachler	Edward R. Brandt	325.58
Falls City, City of		James R. Heiser	246.56

Municipal Power Suppliers (Cont.)

<u>Generation and Distribution</u>	<u>Utility Manager</u>	<u>City or Village Clerk</u>	<u>Assessment</u> \$
Franklin, City of		Edward W. Wolf	50.61
Fremont, City of	William J. Summers		1,069.90
Grand Island, City of	A. A. McKenzie		1,025.56
Hastings, City of	John B. Foster	Edward L. Dier	703.54
Laurel, Village of	L. J. Mallatt	B. D. Pehrson	52.31
Lincoln, City of	Lee V. Blocker		1,205.74
Lyons, City of		Nora T. Sanderson	52.12
Madison, City of		George Moehnert	75.91
Minden, City of	Clayton L. Emal	R. E. Christensen	103.29
Mullen, Village of		W. F. Fosdick	42.35
Nebraska City, City of	Vern Livingston		490.60
Ord, City of	George H. Allen	Wilma D. Kroeger	127.40
Oxford, Village of		Katherine Kahle	42.69
Paxton, Village of		Melvin R. Keith	22.95
Pender, Village of		Mrs. Laverne Franklin	120.04
Peru, City of		Mrs. Grace A. Clineburg	46.51
Plainview, City of	Ray Greenlee	H. A. Baranton	88.22
Randolph, City of		J. F. Atwood	40.11
Red Cloud, City of		Jane Tobler	85.89
Sargent, City of		Orson W. Brass	40.53
Schuyler, City of	Emil Marek		151.25
Sidney, City of	Tom Coffey (City Mgr.)		283.11
Spalding, City of		Ralph E. Brown	48.62
Stratton, City of		Leo C. Foster	42.51
Stuart, Village of		Vernon McClury	25.81
Sutherland, Village of		Vincent Thomas	51.62
Tecumseh, City of	W. M. Barnebey		113.80
Trenton, Village of		Ruth Ward	33.86
Wahoo, City of	Laverne H. Marrens	Wayne H. Edgar	164.33
Wakefield, City of		Weldon C. Schworten	56.03
Wauneta, Village of		B. V. Steinert, Jr.	44.11
Wayne, City of		Howard Witt	157.27
West Point, City of		Martin Ernesti	106.58
Wilber, City of		Melvin Emeigh	60.95
Winside, Village of		Helen Witt	19.00
Wisner, City of		Alice E. Breitkreutz	51.80

Municipal Power Suppliers (Cont.)

<u>Distribution Only</u>	<u>Utility Manager</u>	<u>Village or City Clerk</u>	<u>Assessment</u>
Alexandria, City of	Frank Bowker	Earl Pletcher	\$ 11.19
Arapahoe, City of	Harry Blawvett	Ward C. Urbom	54.10
Bartley, City of	Melvin McGuire	Mrs. Fern Blake	13.28
Battle Creek, City of	Herbert L. Wacker		37.07
Bayard, City of	Glenn W. Calvert	F. O. Rath	47.30
Beatrice, City of	J. L. Pleis		445.48
Beaver City, City of		Mrs. Maude Smith	34.76
Belden, Village of	Arnold H. Hansen	G. E. Banks	7.53
Belvidere, Village of	F. G. Monroe	Kent Williamson	4.88
Benkelman, City of		Floyd Nicholson	62.15
Bertrand, Village of	Neil Shreck	Mrs. Florance Freeland	24.63
Bradshaw, Village of		Donald A. Klute	12.02
Brainard, Village of		D. A. Raskey	10.38
Bridgeport, City of		Mrs. Ellinor Krieger	55.34
Bruning, Village of		Mrs. Leona B. Thompson	12.23
Burr, Village of		Mrs. Blanche Cotton	4.05
Central City, City of		Morris W. Johnson	94.94
Ceresco, Village of		Rance Blodjeet	22.18
Chester, Village of		Edbert Tietjen	19.49
Clarkson, Village of		L. J. Evert	29.95
Cook, Village of		Merle H. Johns	19.37
Cordova, Village of		Mary M. Nickel	6.82
Cotesfield, Village of		Archie Coombs	2.39
Cozad, City of	W. G. Arfmann		305.84
Dakota City, Village of	Charles H. Fueston	Raymond H. Ream	28.38
Davenport, Village of		Mrs. Florence Cameron	17.59
Decatur, Village of		Helen Ogden	24.41
Deshler, City of	R. G. Koewitz		43.74
DeWitt, City of	Harland M. Burney	Gerald Rehm	31.86
Dorchester, Village of		Floyd Beck	21.67
Douglas, Village of	Glenn Kressly	M. W. Dunlap	7.32
Duncan, City of		S. J. Micek	10.03
Edgar, City of		Verna Gunn	20.58
Elk Creek, Village of			
Endicott, Village of		Clyde Kellie	3.45

Municipal Power Suppliers (Cont.)

<u>Distribution Only</u>	<u>Utility Manager</u>	<u>City or Village Clerk</u>	<u>Assessment</u> \$
Fairmont, City of		Harold H. Hurst	27.28
Filley, Village of		Ivan H. Hedge	5.22
Friend, City of	Lewis Ogelvie	Winnie M. Williams	49.37
Gering, City of	Harry S. Skinner	Clarence M. Larsen	219.95
Gilead, Village of		Edward Bulin	
Giltner, City of	Harold Hanson	J. A. Lombardo	12.04
Glenvil, City of	Clarence Lindeman	JoAnn M. Davis	9.22
Gothenburg, City of	David E. Vancil	Nellie Ballmer	171.23
Greenwood, Village of		Betty J. Fritch	17.15
Hampton, Village of	Les Firth	D. R. Ericksen	15.64
Hebron, City of	Harold Betsner	Walter F. Powell	58.80
Hemingford, Village of	Glenn A. Shetler	Jane Planansky	35.75
Hickman, Village of		D. R. DeBoer	10.54
Hildreth, Village of		Fred J. Warnken	14.20
Holbrook, Village of		H. F. Lucas	14.17
Holdrege, City of	E. D. Ingram	Russell V. Batie	226.89
Howells, Village of		J. A. Novak	26.32
Hubbell, Village of		Jesse G. Young	4.43
Imperial, City of	Marvin Athey		87.24
Indianola, City of		Mrs. Mel Hayden	20.42
Kimball, City of		Barbara Courtright	217.57
Leigh, Village of		Herman Neuhaus	18.30
Lexington, City of	S. Y. Gillan (City Mgr.)		285.82
Lodgepole, Village of		Henry Jenik	20.57
Loomis, Village of		Lester Smith	10.25
Lyman, Village of	W. C. McLaughlin	Lillian Pletcher	18.56
Malmo, Village of		Kenneth Peterson	4.86
Maxwell, Village of		Guy Grimm	9.20
Mead, Village of		Alice Erickson	13.46
Milford, City of	Millard Hickerson	Gladys A. Yost	40.07
Mitchell, City of	J. A. Rohrig		58.41
Morrill, Village of		Robert V. Andrew	61.73
Nelson, City of		Ralph Mumma	26.41
North Platte, City of	M. L. Sievers		755.64
Panama, Village of			
Pierce, City of	William R. Holmes		52.37
Polk, Village of		Arnold Neuhaus	19.55
Prague, Village of	Harry Shaw	Amiel Chmelka	

Municipal Power Suppliers (Cont.)

<u>Distribution Only</u>	<u>Utility Manager</u>	<u>City or Village Clerk</u>	<u>Assessment</u>
Reynolds, Village of		Richard Gregory	\$ 4.13
St. Paul, City of	Henry Kilpatrick		68.69
Salem, Village of		O. E. Lawritson	6.73
Seward, City of		Glenn Stepp	167.14
Shickley, Village of		Thomas D. Clift	15.27
Snyder, Village of	Marvin Mead		8.90
South Sioux City, City of		Eileen Conway	239.62
Spalding, Village of		Ralph E. Brown	48.62
Spencer, Village of		George D. Sedlacek	27.25
Stanton, City of		Fred R. Waring	42.51
Stromsburg, City of		David Vaught	48.45
Superior, City of	Frank C. Swain	Lee Sage	118.81
Sutton, City of		R. E. DeFord	37.80
Syracuse, City of		Lola Copenhaver	64.37
Talmage, Village of		W. A. Julifs	17.66
Valparaiso, Village of		J. C. Barry	16.82
Walthill, Village of		W. R. Boughe	21.71
Wilcox, Village of		Helen M. Woollen	12.79
Winside, Village of		Helen Witt	19.00
Wisner, City of		Alice E. Breitkreutz	51.80
Wolbach, Village of	Robert Bentley		13.84
Wood River, Village of	Harry Brotherton	Arthur M. Hauke	30.09
Wymore, City of	Leonard Wilhelm	Al Wood	42.86

NUMBER OF POWER SUPPLIERS BY CATEGORY

1. Wholesale Power Suppliers.....	5
2. G and I Cooperatives.....	2
3. Rural Power Suppliers.....	41
4. Privately Owned Cooperatives.....	2
5. Municipal Power Suppliers.....	151
(a) With Generation and Distribution.....	55
(b) With Distribution Only.....	96
Total of All Power Suppliers.....	201

ANNUAL PEAK LOAD AND RESOURCE DATA—COMBINED EASTERN AND WESTERN AREA

(All Figures in Megawatts)

	1960 MW	1961 MW	1962 MW	1963 MW	1964 MW	1965 MW	1966 MW	1967 MW	1968 MW	1969 MW	1970 MW	1971 MW	1972 MW	1973 MW
SUMMER PEAK LOADS at system inlet)														
Firm Load														
CPPD-Western	28	29	31	32	49 ^C	52 ^C	41	43	46	50	53	57	61	65
Rurals-Western	30.2	33.2	35.6	41.3	44.7	58.6	63.3	68.4	71.7	77.1	84.6	90.9	97.2	103.5
CPPD	377	422	431	475	525	585	635	690	750	815	880	950	1020	1095
CPPD-Eastern	226	250	239	289	338	362	388	416	446	477	511	547	586	628
NPPS -A-	230	249	233	314	343	368	391	415	439	465	491	519	547	577
28 Municipals	*	*	*	*	87.2 ^D	92.4	99.0	106.5	114.8	135.6	131.4	141.7	152.1	*
Municipals -K-	*	*	*	*	65.2	69.9	74.8	80.1	85.8	92.0	98.5	105.4	113.0	*
Subtotals	891.2	983.2	969.6	1151.3	1452.1	1587.9	1692.1	1819.0	1953.3	2111.7	2249.5	2411.0	2576.3	2468.5
Firm Resources -B-														
CPPD-Western	33	33	33	58	58	58	58	58	58	58	58	58	58	58
Rurals-Western -L-	30.2	33.2	35.6	41.3	44.7	58.6	63.3	68.4	71.7	77.1	84.6	90.9	97.2	103.5
CPPD	444	474	494	629	633	634	659	694	802	802	802	802	802	802
CPPD+NPPS-Eastern -E--J-	528	599	606	606	657	719 ^M	770 ^M	770 ^M	788 ^M	806 ^M	823 ^M	823 ^M	823 ^M	823 ^M
28 Municipals	*	*	*	*	163.2	167.3	180.1	181.8	184.2	184.2	191.3	194.7	197.4	*
Municipals -K-	*	*	*	*	76.8	78.2	89.8	89.8	89.8	89.8	89.8	89.8	89.8	*
Subtotals	1035.2	1139.2	1168.6	1334.3	1632.7	1715.1	1820.2	1862.0	1993.7	2017.1	2048.7	2058.4	2067.4	1786.5
Surplus or Deficiency														
CPPD-Western	5	4	2	26	9	6	17	15	12	8	5	1	(3)	(7)
Rurals-Western	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CPPD	67	52	63	154	108	49	24	4	52	(13)	(78)	(148)	(218)	(293)
CPPD+NPPS-Eastern	72	100	134	3	(24)	(11) ^F	(9) ^F	(61) ^G	(97) ^H	(136)	(179)	(243)	(310)	(382)
28 Municipals	*	*	*	*	76.0	74.9	81.1	75.3	69.4	48.6	59.9	53.0	45.3	*
Municipals -K-	*	*	*	*	11.6	8.3	15.0	9.7	4.0	(2.2)	(8.7)	(15.6)	(23.2)	*
Combined Surplus or Deficiency)	144	156.0	199.0	183.0	180.6	127.2	128.1	43.0	40.4	(94.6)	(200.8)	(352.6)	(508.9)	(682.0)
Surplus or (Deficiency) Less 28 Municipals	*	*	*	*	104.6	52.3	47.0	(32.3)	(29.0)	(143.2)	(260.7) [*]	(405.6)	(554.2)	*

NOTES

- A NPPS load estimates include Rural load growth above Equity.
 B Firm Power purchases and firm generating capacity (generating capability less required reserves).
 C Includes 14 MW of out-of-state sales.
 D The portion of loads included in municipal estimates which are supplied by and included in loads of other agencies.
 E Estimate used for U.S.B.R. Class II power purchases.
 F Reserve capacity is available under existing interconnection contracts.
 G Expected to be available from U.S.B.R.
 H Available from OPPD and other utilities.
 J Includes 100 MW of Summer Firm which is withdrawable upon three years' notice.
 K Includes Hastings, Grand Island and Fairbury.
 L Purchase--Tri-State G and I.
 M Includes 85 MW gross nuclear generation at CPPD Sheldon Station.

SUMMARY
NEBRASKA ANNUAL PEAK LOADS AND RESOURCES

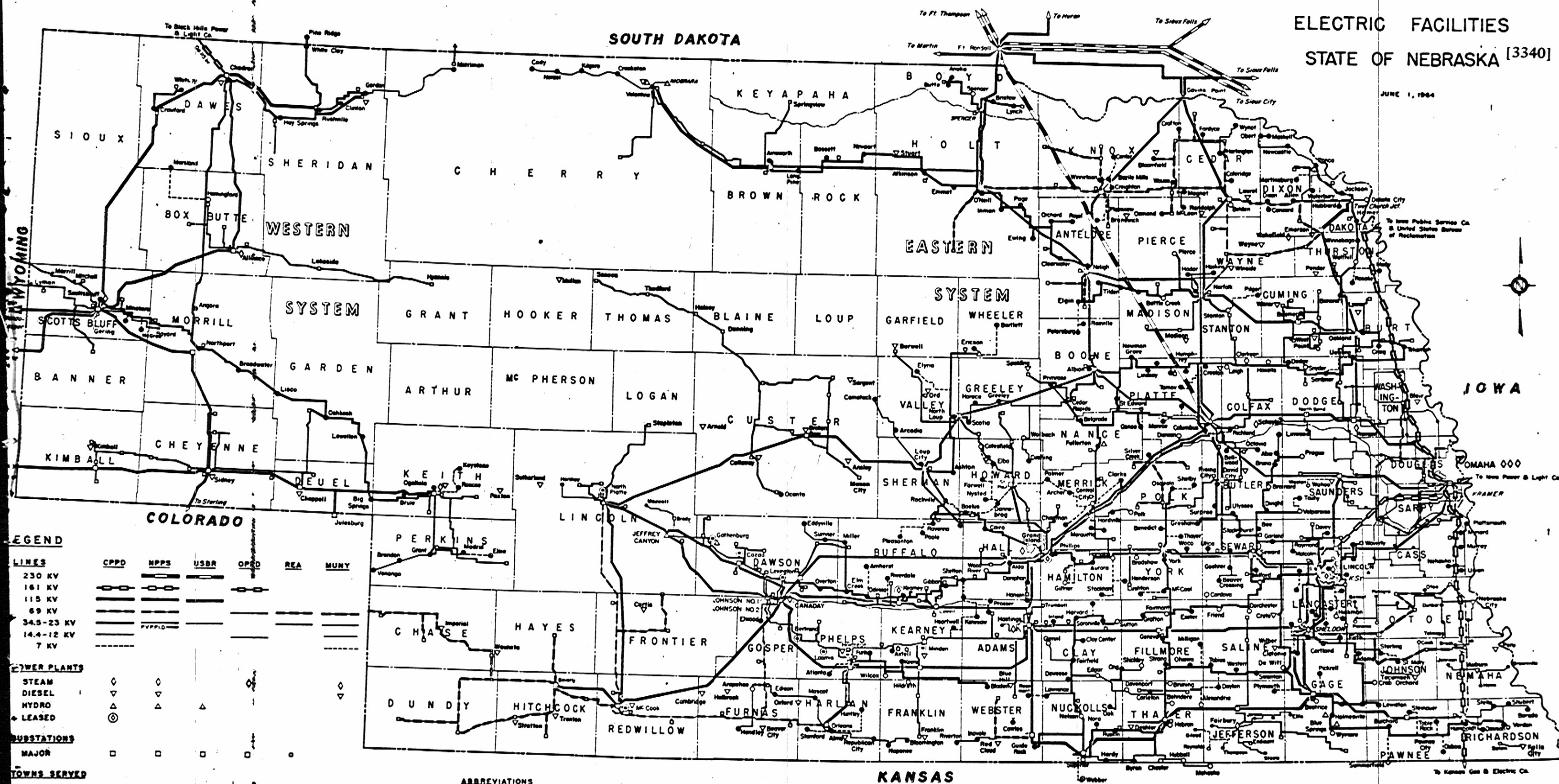
Includes Omaha Public Power District, combined NPPS - Consumers System
Consumers Western System, and all Rural Systems and 31 Municipal Systems,
From "Revised Report on Loads and Resources"
November 13, 1964, by the Nebraska Power Industries Committee

	Historical							Estimated						
Summer Peak Loads (at system inlet)	1960 MW	1961 MW	1962 MW	1963 MW	1964 MW	1965 MW	1966 MW	1967 MW	1968 MW	1969 MW	1970 MW	1971 MW	1972 MW	1973 MW
Total Net Firm Load	891	983	970	1151	1452	1588	1692	1819	1953	2112	2250	2411	2576	2469
Total Net Firm Resources	1035	1139	1169	1334	1633	1715	1820	1862	1993	2017	2049	2058	2067	1787
Total Net Surplus (1)	144	156	199	183	181	127	128	43	40	-	-	-	-	-
Total Net Deficiency (2)	-	-	-	-	-	-	-	-	-	95	201	353	509	682
Total Net Surplus less 28 Municipals (3)	*	*	*	*	105	52	47	-	-	-	-	-	-	-
Total Net Deficiency less 28 Municipals (3)	-	-	-	-	-	-	-	32	29	143	261	406	554	*

- 1)) Purchases of power and energy from out-of-state sources and presently approved generation are included in resources shown through 1966.
- 2)) If total net deficiency is met by means of generation within Nebraska, the quantities shown must be increased in the amount of the required reserves. Also, further increase will be necessary by reason of lack of interconnection between all of the various power suppliers. Additional power sources and loads will require extension to existing and additional new heavy transmission lines.
- 3)) There are 28 municipals which, for various reasons, lack either or both an interchange contract or physical interchange facilities with NPPS and their surplus generation is, therefore, unavailable for meeting the State's peak load requirements.
- Information not available for municipal loads and resources.

ELECTRIC FACILITIES STATE OF NEBRASKA [3340]

JUNE 1, 1964

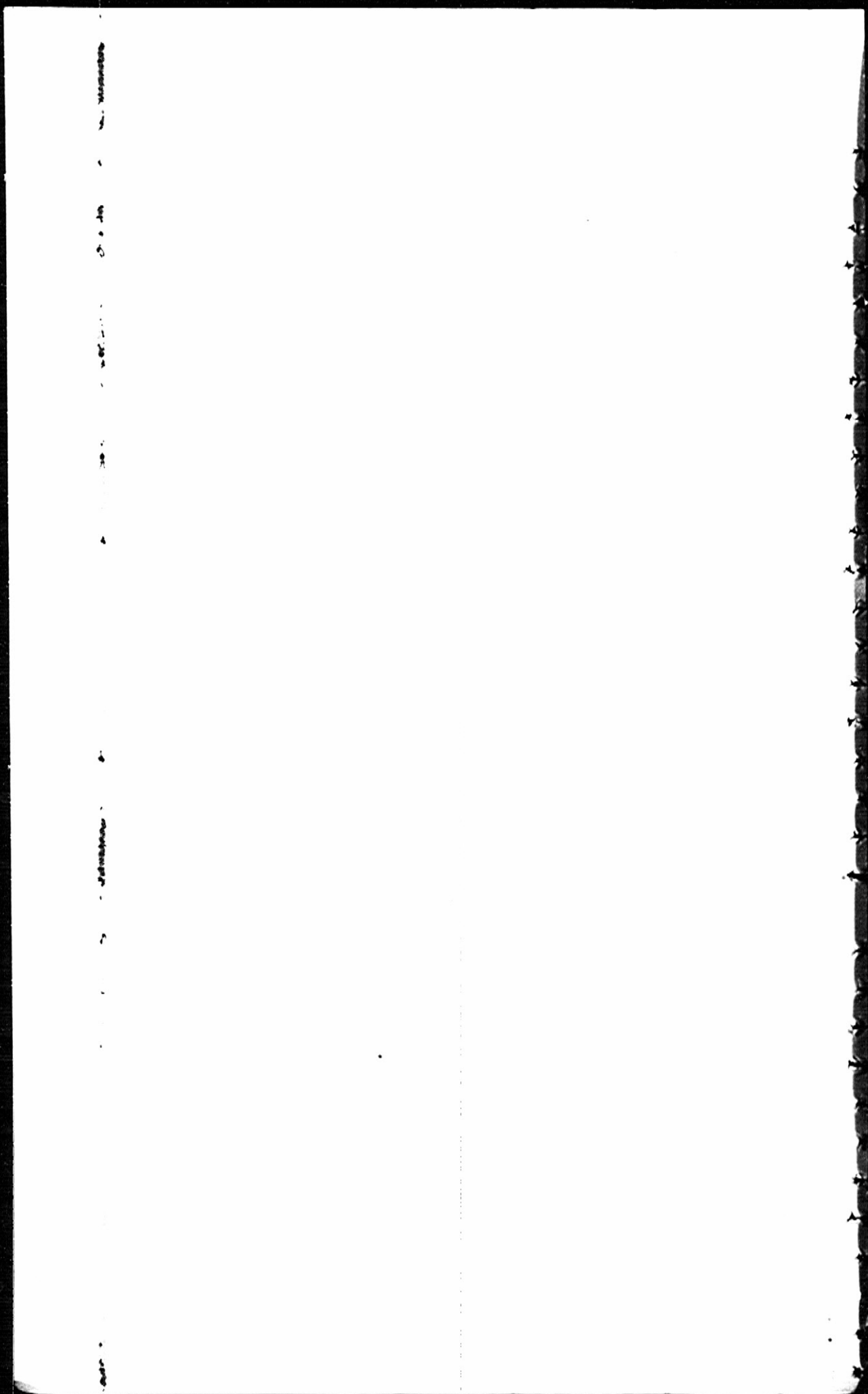


SCALE OF MILES
0 10 20 30 40 50

PREPARED BY
R.W. BECK AND ASSOCIATES
ANALYTICAL AND CONSULTING ENGINEERS
COLUMBUS, NEBRASKA
SEATTLE - DENVER - PHOENIX

JA 267

BEST COPY AVAILABLE
from the original bound volume



[3343]

BEFORE THE
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

MOTION TO STRIKE EXHIBITS

Pursuant to the Commission's order of August 19, 1965, fixing a hearing in the above-entitled proceedings, and providing procedures for the filing of prepared testimony and exhibits, the Applicant for license, Rocky Mountain Power Company, filed its direct case on March 1, 1966.

Sub-paragraphs (5) and (6) of paragraph (B) of the order of August 19, 1965, provides as follows:

(5) All of the testimony, except exhibits, shall be in question and answer form.

(5) No exhibits, except those of which official notice may properly be taken, shall contain narrative material other than brief explanatory notes.

Large portions of the material filed as exhibits consist of narrative material which sub-paragraph (5) provides shall be in question and answer form and which sub-paragraph (6) provides shall not be included as part of an exhibit. An important consideration for including sub-paragraphs (5) and (6) was, of course, to require that a party present his direct case as clearly as possible, and to prevent such party from placing other parties in a position of carrying on extensive cross-examination in order to understand the evidence submitted. Although Applicant's direct case may be clarified by extensive cross-examination, the Commission has made this time-consuming chore unnecessary by the aforesaid sub-paragraphs (5) and (6) of its order.

[3344]

Commission staff counsel therefore moves that the portions of the Applicant's exhibits identified in this motion

[3344]

be stricken, and that the Applicant be given until April 29, 1966, when the testimony of other parties is to be filed, to resubmit the stricken narrative material in question and answer form in conformity with the Commission's order.

The specific portions of Applicant's Exhibits Commission staff moves be stricken are as follows:

Exhibit 100-01

Volume I

Pages 1 through 11 - strike entirely.
Attached Exhibits A, B, C, D.
Pages 1 and 2 of attached Exhibit E.
Attached Exhibits F, G, H.
Pages 1, 2 and 3 of attached Exhibit I.
Attached Exhibit M.
Page 1 of attached Exhibit N.
Attached Exhibit O.

Exhibit 100-02

Volume II

Pages 1 through 18 - strike entirely.
Attached Exhibits A, B, C, D, E, F, G.
Pages 1 through 8 of attached Exhibit H.
Pages 1 through 4 of attached Exhibit I.
Attached Exhibit M.
Page 1 of attached Exhibit N.
Attached Exhibit O.

Exhibit 100-10

Volume IV

Preface pages i through vii - strike entirely.
Pages 1 through 11 entirely.
Page 12, strike beginning with the word "sets" in the first line through "Table A" in the 12th line.
Page 13 - strike entirely.
Page 14 - strike first line.
Pages 15 and 16 - strike entirely.
Page 17 - strike all material except Table C.
Pages 18 through 21 - strike entirely.
Page 22 - strike beginning with word "annual" in line 1 through word "below" in line 10.

[3345]

Pages 23 and 24 - strike entirely.
Page 25 - strike beginning with "A. Boiler" in line 1 through word "characteristics" in line 7.
Page 26 - strike beginning with word "Each" in line 6 through to end of page.
Pages 27 through 64 - strike entirely.
Page 65 - strike beginning with "H. Miscellaneous" in line 1 through word "plant" in line 10.
Page 66 - strike beginning with "Grounding" 5th line from the bottom to end of the page.
Pages 67 through 71a - strike entirely.
Page 75 - strike entirely.
Page 81 - strike entirely.
Pages 86 and 87 - strike entirely.
Pages 109 and 110 - strike entirely.

Exhibit 100-12

Volume V-A

Preface pages i through vi - strike entirely.
Pages 1 through 11 - strike entirely.
Page 12 - strike beginning with word "sets" in line 1 through word "Table A" in line 12.
Page 13 - strike entirely.
Page 14 - strike first line.
Pages 15 and 16 - strike entirely.
Page 17 - strike all material except Table C.
Pages 18 through 20 - strike entirely.
Pages 21 through 23 - strike entirely.
Page 24 - strike all material except Table D.
Page 25 - strike entirely.
Page 26 - strike all material except Table E.
Page 27 - strike all material except Table F.
Pages 28 through 34 - strike entirely.
Pages 36 through 39 - strike entirely.
Page 40 - strike all material except item "g." and Table I.
Pages 41 through 52 - strike entirely.
Pages 78 and 79 - strike entirely.

[3345-3346]

Pages 100 and 101 - strike entirely.

Exhibits 100-12

Volume V-B Section 1,
Transmission Lines

Pages 1 through 21 - strike entirely.

Volume V-B Section 2,
Substations and Switch-
yard

Pages 1 through 30 - strike entirely.

[3346]

Exhibit 100-20

Volume VII

Pages 1 through 4 - strike entirely.

Page 5, beginning with the word "There" in first line,
strike through word "Meeker" in fifth line from the
bottom of the page.

Page 7 - strike entirely.

Page 8 - strike all material except the three lines in
sub-paragraph "d".

Page 10 - strike beginning with words "It is" in sub-
paragraph "g" through to end of the page.

Page 11 - strike first five lines.

Pages 19 through 21 - strike entirely.

Page 23 - strike all material except that in subpara-
graphs "a" and "b".

Page 24 - strike all material except tabulations under
subparagraph "(4)".

Pages 26 and 27 - strike entirely.

Pages 29 through 31 - strike entirely.

Page 33 - strike entirely.

Pages 36 through 39 - strike entirely.

Pages 41 through 43 - strike entirely.

Page 44 - strike all material except tabulation under
Section 10, a.

Page 45 - strike entirely.

Pages 46 through 54 - strike entirely.

Exhibit 100-23

Volume X

Strike "Summary" pages i and ii.
Pages 1 through 6 - strike entirely.
Page 7 - strike all material except Table I.
Pages 8 and 9 - strike entirely.
Page 11 - strike entirely.
Page 12 - strike all material except Table III.
Page 13 - strike entirely.
Page 15 - strike all material except Table V.
Page 16 - strike all material except Table VI.
Pages 17 and 18 - strike entirely.
Pages 26 through 28 - strike entirely.
Page 30 - strike entirely.
Pages 33 through 36 - strike entirely.
Pages 38 through 50 - strike entirely.
Pages 52 through 66 - strike entirely.

[3347]

This motion does not apply to any charts, maps or tabulations which have not been given a page number, and which are placed between designated pages in the exhibits.

Commission staff counsel is making this motion specially at this time in order to afford the Applicant an opportunity to resubmit the stricken material in conformance with the Commission's order without delaying the hearing, and to avoid the resulting confusion if a motion of this nature were to be made for the first time on May 9, 1966, when all motions to strike are to be filed. Commission staff counsel reserves the right to file further motions to strike on May 9, 1966, in accordance with subparagraph 4 of paragraph (B) of the order fixing a hearing.

Respectfully submitted,

Donald A. Sander
Commission Staff Counsel

Washington, D.C.
March 18, 1966

[3352]

[3352]

[Received Mar 21 11 40 AM '66 Federal Power Commission]

BEFORE THE
FEDERAL POWER COMMISSION
OF THE UNITED STATES

Project No. 2289

THE STATE OF COLORADO FOR)	
THE USE AND BENEFIT OF THE)	
GAME, FISH AND PARKS COMMISSION,)	PETITION
)	TO INTER-
Petitioner,)	VE NE
)	
IN THE MATTER OF ROCKY)	
MOUNTAIN POWER COMPANY)	

COMES NOW, The State of Colorado for the use and benefit of the Game, Fish and Parks Commission, by the Attorney General, Duke W. Dunbar, and Assistant Attorney General, Donald H. Henderson, assigned to the Game, Fish and Parks Department, and respectfully represents that it has an interest in the matters under consideration in the above-captioned Docket, and that it desires to intervene therein, and become a party thereto on behalf of itself to protect their interests as they may appear, and as grounds for proposed intervention says:

I

That, by virtue of provisions contained in Chapter 62, Colorado Revised Statutes 1963, it is the duty of the Game, Fish and Parks Commission of the State of Colorado to supervise, maintain and protect the game and fish resources of the state; and the enforcement of laws for the protection of such resources is the responsibility of the Game, Fish and Parks Commission as a duly constituted agency of the State of Colorado.

II

The proposal includes tunnels which would take water from the White River drainage and divert it to Sweetwater Creek thereby changing flows that might adversely affect fish and wildlife.

[3353]

III

The streams involved are important fishing streams and should not be altered by impoundments or diversions without adequate advance study by the State Game, Fish and Parks Commission and the U. S. Bureau of Sport Fisheries and Wildlife prior to issuance of a license.

IV

The Colorado Game, Fish and Parks Department filed an informal letter of protest with the Federal Power Commission on June 8, 1965, which was acknowledged by the Commission on July 12, 1965. This petition merely makes that protest a formal protest so that we may offer evidence if necessary. This petition, if granted by the Commission will in no way unduly broaden the issues involved.

THEREFORE, your petitioner prays leave to intervene in and become a party to the above-entitled proceedings and be made a party thereto with the right to have notice of and appear at all hearings to produce and cross examine witnesses and to be heard in person or by counsel or other rep-

[3353, 3365]

representative upon brief and oral argument, if oral argument is granted.

Respectfully submitted,

DUKE W. DUNBAR,
Attorney General
State of Colorado

DONALD H. HENDERSON,
Assistant Attorney General
Game, Fish and Parks
Department
6060 Broadway
Denver, Colorado 80221

[3365]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

PRESIDING EXAMINER'S ORDER
FIXING PREHEARING CONFERENCE

(March 30, 1966)

A prehearing conference is called for Tuesday, April 12, 1966 at 10:00 a.m. in a hearing room of the Federal Power Commission for the following purposes:

(1) Counsel for the applicant is requested to make an opening statement outlining the nature of the application and of the evidence to be presented in support of it and, so far as may be possible, the main areas of probable factual and legal conflict.

(2) Other counsel may, if they so desire, make such statements or may reserve them until the hearing.

(3) Argument will be heard on Staff Counsel's motion of March 18, 1966 to strike exhibits.

[3365, 3367]

(4) Applicant's exhibits will be marked for identification and applicant's testimony will be ordered copied into the record, unless argument on the motion shows a different course of action to be preferable.

(5) Procedures may be fixed regarding the service of evidence of the other participants.

Arthur H. Fribourg
Presiding Examiner

[3367]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Lee C. White, Chairman; L. J.
O'Conner, Jr., Charles R. Ross,
David S. Black, and Carl E. Bagge.

Rocky Mountain Power Company) Project No. 2289

ORDER GRANTING PETITION TO INTERVENE

(Issued April 11, 1966)

The State of Colorado Game, Fish and Parks Commission, filed a timely protest on June 10, 1965, with respect to Rocky Mountain Power Company's application for license for Project No. 2289.

On August 19, 1965, we issued an order fixing a hearing on Rocky Mountain Power Company's application. By petition filed March 21, 1966, the State of Colorado, for the use and benefits of its Game, Fish and Parks Commission, seeks to intervene in this proceeding in order to participate as a party in the scheduled hearing.

The Commission finds:

The participation in this proceeding by petitioner, the State of Colorado through its Game, Fish and Parks Commission may be in the public interest.

[3367, 3372]

The Commission orders:

The above-named petitioner is hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however*, that participation by petitioner should be limited to matters affecting certain rights and interests specifically set forth in its petition for leave to intervene; and *Provided further*, that the admission of the petitioner shall not be construed as recognition by the Commission that the petitioner might be aggrieved by any order or orders issued by the Commission in this proceeding.

By the Commission.

(S E A L)

Joseph H. Gutride,
Secretary.

[3372]

BEFORE THE
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

MOTION TO REVERSE RULING
OF PRESIDING EXAMINER

Commission staff counsel moves that the ruling by the Presiding Examiner (Tr. 62-63) denying staff counsel's motion to strike certain narrative material submitted by Applicant in its direct case in this proceeding, be reversed and that the Applicant be given 30 days within which to resubmit its direct case in accordance with the Commission's order of August 19, 1965 prescribing procedure and fixing hearing.¹

¹Copies of the Commission's order of August 19, 1965 prescribing procedure and fixing hearing, staff counsel's motion to strike, and pages 51 through 63 of the transcript of the prehearing conference relating to the subject are attached.

The effect of the Examiner's ruling is to nullify the Commission's procedural order which was designed, among other things, to prevent the parties from camouflaging their direct cases, and in particular to require the Applicant to do its homework before the commencement of the hearing. For example, in subparagraph 2 of paragraph (b) of its attached order, the Commission stated the "Applicant's filing shall include a full and complete statement of a definite plan for financing of the project, and a full and complete statement of definite plans for the marketing of the electric power to be produced by the project." The staff regards the evidence on financing and marketing as being in

[3373]

non-compliance with subparagraph 2 of paragraph (B). However, in view of the manner in which the Applicant's material has been prepared, it is difficult to determine to what extent such material is deficient with respect to these and the other subjects which are essential to the support of the application.

The Applicant's direct case consists largely of voluminous engineering reports which contain extensive narrative material, in direct violation of subparagraph 6 of paragraph (B) of the Commission's procedural order. Some of these engineering reports were prepared prior to the issuance of the procedural order, but all of such reports contain the type of material which subparagraph 6 of paragraph (B) of the Commission's procedural order was designed to prevent. This procedure has been in use for several years and the prohibition against the use of narrative material in exhibits has always heretofore been understood to mean that such material is limited to headings and explanatory footnotes on tables and charts which are to be presented as exhibits. In order to qualify such exhibits (tables and charts) for receipt in evidence they must be explained by the witness sponsoring the exhibit. In other words, the Commission's procedure in this proceeding, if followed, requires a full disclosure before a direct case is received in evidence.

[3373-3374, 3394]

The Commission's procedural order, if followed, also prevents unsupported conclusions and opinions, such as are contained in the narrative material in the aforesaid engineering reports presented by Applicant. Such conclusions and opinions, without supporting factual bases therefor, are of no assistance to the Commission in making the findings essential to a disposition of the problems presented in an application for license.

[3374]

The ruling by the Presiding Examiner has the effect of allowing the Applicant to file a sketchy direct case and place an undue burden on staff and intervenors in attempting to review such evidence. We submit that the procedure prescribed by the Commission cannot function unless all parties are required to comply.

Respectfully submitted,

Donald A. Sander
Commission Staff Counsel

Washington, D. C.
April 15, 1966

[3394]

BEFORE THE
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

RESPONSE TO STAFF'S MOTION
TO REVERSE RULING OF
PRESIDING EXAMINER

The Colorado River Water Conservation District, an intervenor herein, supports Staff's motion seeking a favorable

ruling on the motion to strike certain of Applicant's exhibits.¹

Paragraph (B) of the Commission's Order of August 19, 1965, fixing hearing and prescribing procedure provided inter alia:

"6 *No exhibits, except those of which official notice may properly be taken, shall contain narrative material other than brief explanatory notes.*" (Order, p.3, emphasis added)

Despite this clear directive, the filing of testimony and twelve volumes of exhibits by the Applicant on March 1, 1966, pursuant to paragraph (B)1. of the Commission's Order of some 7 months earlier, was made in wholesale and flagrant violation of the cited paragraph, as well as other provisions of the

¹Whether Applicant should have the 30 days mentioned by Staff in which to repair the matter is problematical but if further time is granted, the District urges that intervenors and Staff be allowed an equivalent period after that in which to make their own filings. Commission action on other motions anticipated in this proceeding may obviate this problem. See fn. 2 infra.

[3395]

Commission's Order.² Only a cursory look at Volumes I, II, IV, VA, VB, VII and X of Applicant's exhibits is necessary to show this.

²The District concurs with Staff counsel that Applicant has also failed to comply with paragraph (B)2, of the Order (August 19, 1965, p.2) requiring Applicant's March 1 filing to contain a "full and complete statement of a definite plan" for financing and marketing, absent which the application would be subject to a motion to dismiss. In response to questions by the Examiner, Applicant conceded at the pre-hearing conference on April 12, that it had neither a complete presentation on financing nor any contracts for the sale of power (Tr. 18, line 7 - Tr. 20, line 8). A motion to dismiss was accordingly made on the record (Tr. 29) and the District understands it will be pre-

[3395-3396]

Even Applicant saw the problem and indicated that the granting of the motion would not "give us a great deal of concern". (Tr. 60). He said that some 80 pages of testimony had already been prepared in rough form in order to replace the offending material (Tr. 62). Nevertheless, the Examiner denied the motion. (Tr. 62-63).

This matter does not require extended discussion. The Commission established the procedure to be followed. This procedure is not one of empty form but was established to protect all parties - and the Commission - from the submission of dated, brochure-like material and rambling, confusing reports as evidence. It was intended that the filing party show his case in prepared

sent to the Commission as promptly as possible. It is further anticipated that a motion will be made at an early date to strike what is called Stage III of the application (included as Vol. II of Applicant's exhibits) because the testimony filed makes it clear that Applicant does not want a license for Stage III at this time.

[3396]

sworn testimony, not that a bewildering variety of reports be thrown into the record as evidence, forcing counsel for others to sift and probe endlessly in order to protect that record.

There can be no question that there must be at least substantial compliance with Commission orders. The situation presented in Staff's motion shows such a gross variance by the Applicant that the motion must be granted if Commission orders on procedure are to have any meaning at all.

Respectfully submitted,
COLORADO RIVER WATER
CONSERVATION DISTRICT

* * *

[3401-3402]

[3401]

[Received Apr 25 10 03 AM '66 Federal Power Commission]

BEFORE THE
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

MOTIONS TO DISMISS APPLICATION

COMES NOW Utah Power and Light Company and Western Colorado Power Company, by their attorneys, Irvine and Baucom of Salt Lake City, and John R. Barry of Denver, Colorado, and respectfully make the following motions, and pursuant to the rules of practice before the Federal Power Commission address these Motions to the Commission itself for disposition.

* * *

MOTION NO. 2

These intervenors move that the Commission dismiss Application No. 2289, and as grounds therefor state: None of the exhibits in applicant's direct case nor the opening

[3402]

statement of counsel as reflected by the transcript of the prehearing conference indicates that the applicant has any market at this time for the sale of electrical energy proposed to be produced by the installations involved in the application.

Authority: *Market conditions*: In justifying a proposed project economically, the F.P.C. gives extensive weight to market conditions. Such conditions also have a substantial bearing on the need for the project and this factor shall be weighed in the issuance of a license. (In the matter of *Pacific Gas and Electric Company*, 1940 (2) FPC 300).

[3402, 3406]

MOTION NO. 3

The intervenors move that the Application No. 2289 be dismissed, and as grounds therefor state: None of the exhibits in applicant's direct case nor the opening statement of counsel as reflected in the transcript of the prehearing conference indicates that the applicant has the financial ability to obtain the money necessary for the construction of the project involved herein. This application has been on file for a very long time and certainly if it were financially attractive the applicant could have at this late date obtained sufficient financing to construct the facilities involved.

Authority: Customarily the FPC does not issue hydroelectric licenses to an applicant who has not presented evidence of financial ability to carry out the project and who does not show that the project is economically feasible. (*Public Power and Water Corporation*, 1953, 12 FPC 197; *Wilson and National Youth Foundation* (1962) 28 FPC 571)

[3406]

* * *

MOTION NO. 7

The intervenors move that the application be dismissed for the reason that the applicant does not now seek authority for the construction of the facilities called for by the East-West Intertie, Inc. Through corporate ownership, East-West Intertie is an integral part of the overall projects being submitted to the Commission. East-West Intertie is a public utility under the definitions pronounced by the Commission. (See *In The Matter of Interstate Power et al* 1939 (2) FPC 71; also, *Dairyland Power Cooperative et al*, 1963, (30) FPC 365). The authorization for these facilities should be subject to Commission authorization at this time the same as the hydro facilities. Intervenors assert that since these facilities are an integral part of the overall planned project, authorization, therefore, should be included herein so that the parties may meet all the issues at once instead of doing so on a piecemeal basis.

[3411]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

JOINDER OF PUBLIC SERVICE COMPANY OF
COLORADO IN "MOTIONS OF UTAH POWER
& LIGHT COMPANY AND WESTERN COLO-
RADO POWER COMPANY TO DISMISS APPLI-
CATION FOR LICENSE"

COMES NOW Public Service Company of Colorado (In-
tervenor) and files this Joinder in the "Motions of Utah
Power & Light Company and Western Colorado Power Com-
pany to Dismiss Application for License" filed herein by
Motion dated April 22, 1966. In further support of Motion
No. 2 and Motion No. 3 set forth therein, this Intervenor
shows as follows:

Applicant has wholly neglected and failed to comply with
the order of the Commission dated August 19, 1965 pre-
scribing procedure and fixing hearing, and in particular, with
paragraph (B) 2, which required the following of Applicant:

"The Applicant's filing shall include a full and com-
plete statement of a definite plan for the financing
of the project, and a full and complete statement of
definite plans for the marketing of the electric pow-
er to be produced by the project. Failure to com-
ply with this directive will constitute a basis for a
motion to dismiss the application for a license for
lack of completeness."

Applicant's filing failed to include in its testimony or ex-
hibits any proper statement of a plan, definite or otherwise,

[3412, 3419]

[3412]

for the financing of the project or the marketing of electric power intended to be produced therefrom.

Respectfully submitted,
DONALD D. CAWELTI
LEE, BRYANS, KELLY &
STANSFIELD
990 Public Service Company
Bldg.
Denver, Colorado
Attorneys for Public Services
Company of Colorado
By /s/ Donald D. Cawelti

Dated at Denver, Colorado
this 22nd day of April, 1966.

[3419]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

MOTION OF HUMBLE OIL & REFINING
COMPANY TO DISMISS STAGE III
OF APPLICATION FOR LICENSE

COMES NOW Humble Oil & Refining Company (Humble) and files this motion to dismiss that part of the application filed in Project No. 2289, denominated "Amendment to Application for License No. 2289 - Colorado (December 31, 1964) Sweetwater Hydroelectric Project Stage III, A Development for Peaking Capacity Based on Pumped-Storage Generation, Supplemented by Stored Runoff," filed December 31, 1964. In support whereof, Humble shows as follows:

I

The application for the so-called "Sweetwater Hydroelectric Project" is divided into two parts. One part, filed November 30, 1964, is demoninated "Stages I and II - - - - Pumped Storage." The other, filed December 31, 1964, is demoninated "Stage III, A Development for Peaking Capacity Based on Pumped-Storage Generation Supplemented by Stored Runoff."

This motion is restrictively addressed to the Stage III part of the application. That part was described as follows by the Commission's "Notice of Amended Application for

[3420]

License for Proposed Project," issued May 11, 1965:

"*Stage III*; further expansion of all Sweetwater facilities to permit the installation of the 5th and 6th motor-generator pump storage units; Sweetwater Forebay low-head pumping plant containing two 8,400 hp units for pumping; Lost Solar Creek earth fill upper forebay dam (3,500 acre-feet of usable storage); South Fork earth-rockfill afterbay reservoir dam on the South Fork of White River (5,800 acre-feet of usable storage); Meadows Reservoir (124,000 acre-feet of usable storage) created by a 280-foot high rockfill dam on the South Fork of the White River; water conduits connecting South Fork Reservoir with Lost Solar Forebay; Lost Solar Forebay with Meadows Reservoir; Meadows Reservoir with Sweetwater Forebay Reservoir; Lost Solar power-plant containing four initial and provision for four future units with ultimate capacity of 495,000 kilowatts."

II

The initial application was filed *in January, 1961*. Periodically thereafter letters were addressed to the Applicant looking toward correction of specific designated deficiencies. Such letters were dispatched on February 2, March

[3420-3421]

17 and April 24, 1961; on March 30 and May 30, 1962; on March 30 and July 29, 1963; and on March 30 and July 23, 1964 (T. 37-8).¹ Following a conference between representatives of the Applicant and the Staff of the Commission, the Applicant addressed a letter to the Commission on November 13, 1964, indicating that an amended application covering Stages I and II would be

¹ All transcript citations herein refer to the Prehearing Conference, held April 12, 1966.

[3421]

submitted on or before November 30, 1964. With respect to Stage III, that letter indicated an expectation of a filing on or before December 31, 1964, and stated that:

“Construction of this stage is not expected to start until the Spring of 1966.”

III

Following the filing of the two parts of the amended application, on November 30, 1964, and December 31, 1964, respectively, the Commission issued a notice thereof on May 11, 1965, which was thereafter duly published (30 F.R. 6743). This notice not only covered Stages I and II, but also expressly covered Stage III. Principally because of the inclusion of the application for Stage III, Humble sought and was granted leave to intervene.

On August 19, 1965, the Commission issued its “Order Fixing Hearing.” That order took express notice of the fact that the application covered both Stages I and II, as amended November 30, 1964, and for Stage III, as filed December 31, 1964. It also recognized that “public notice of the application, as revised and amended, was given on May 11, 1965.”

It is thus undeniable that the Applicant has filed and that there is now pending a request for a license as to Stage III. The published notice expressly included Stage III. The call

for hearing likewise expressly included Stage III. And it is of this same Stage III which the Applicant advised the Commission that it expected to commence constructing in the Spring of 1966.

[3422]

IV

It has now become evident, however, that the Applicant has abandoned its application for license as to Stage III.

Time and time again at the Prehearing Conference on April 12, 1966, Applicant² made abundantly clear the fact that it will not even attempt during the hearing to prove up its Stage III application, and further that, after conclusion of the hearing, Applicant does not seek or expect a Stage III license to issue.

Thus, Applicant's Counsel said to the Examiner early in the day (T. 14-5):

"You are being asked to approve stages 1 and 2 in our present application. In short, you are being asked—the Meadows Reservoir [Stage III] is the part which will be sought in subsequent application."

what he thus says will be "sought in subsequent application" is the very Stage III which is a part of the pending application for license in Project No. 2289, which has been duly noticed, and for which an order for hearing has issued.

The anomaly with respect to Stage III became still more incongruous in the following colloquy which followed certain comments by Applicant's Counsel with respect to a

²Applicant's spokesman at the Prehearing Conference was its Counsel and President, Mr. Charles F. Brannan.

[3423]

[3423]

conflict over water rights incident to Stage III (T. 22-3):³

"PRESIDING EXAMINER: I understood you to say before that I was being asked *only* for an order with respect to stages 1 and 2.

"MR. BRANNAN: *Right.*

"PRESIDING EXAMINER: So that this conflict on water rights is something with *which I have no concern*, is that correct?

"MR. BRANNAN: This is my position, sir. * * *."

Likewise, making it clear that Applicant does not wish to put the Stage III application before the Commission, Applicant's Counsel stated (T. 36):

"The costs of the project, Stations [*sic*] 1 and 2, which are now before the Commission, is \$44,904, 417."

The confusion engendered by the Applicant's contradictory position as to Stage III was pointed out by Staff Counsel in these words (T. 39-40):

"One other point I want to touch on, and that is the applicant today has told us that Stage 3 is not before us. I disagree. We have an application for a license for the third stage. The Commission's order is broad enough to include the third stage. Applicant's exhibits include the third stage. We have revenues. We have costs from the third stage. And I think that it would be a grave error to limit this hearing to only the first two stages.

"I think that we must consider all three stages, and this would not be the first time that we have considered all three stages, although there is a period of time which would elapse between construction of each stage.

³Emphasis in quoted material herein is supplied except where otherwise noted.

[3424]

"I think it is necessary in order to get the complete picture to do so. For example, if you will look at Volume 4, which contains Exhibits 14 through 19, if you will look at the Table of Contents you will see frequent references to capital costs, estimated cost, of Stage three.

"If you will look at the economic feasibility study, following page 1, you will find Stage 3-A, 3-B, are included. More significantly, if you would look under the column, the last column "Excess Annual Cost Over Revenues," at the end of Stage 3-A, and the end of Stage 3-B, you find a minus figure under the 5.5 percent financing in both instances."

When Staff Counsel continued to express his view that "all the issues that are involved here should be tried at one time," the following exchange was precipitated (T. 41-2):

"PRESIDING EXAMINER: You are not suggesting, are you, Mr. Sander, that I consider issuing an order for *something that the applicant isn't asking for*?

"MR. SANDER: Well, does the applicant intend to build Stage 3?

"MR. BRANNAN: Certainly the applicant intends to build Stage 3, if it gets a license from this Commission to build Stage 1 and Stage 2. Then *we will come back and talk about Stage 3.*

* * * * *

"Now, we chose to put everything before the Commission on the premise that that which is not pertinent for the decision which we seek for license for Stages 1 and 2, it can ignore. As to that which is pertinent, it is available if the Commission cares to refer to it. It is on this premise, basically, the concept of a very full disclosure, that we have placed all of this material before the Commission."

[3425]

[3425]

The following colloquy is to the same effect (T. 49-50):

"PRESIDING EXAMINER: It is my understanding that Mr. Brannan is *not asking me for any order with respect to Stage 3*. I will be glad to have that impression corrected if it is erroneous.

"Mr. Brannan, am I not correct?

"MR. BRANNAN: Yes. We are seeking an order with respect to Stages 1 and 2."

As Applicant's Counsel said to the Examiner (T. 51):

"Well, Mr. Examiner, we have no intention of withholding any information concerning Stage 3. When all of the record is in, if you see fit to issue us *a license with respect to Stage 1 and Stage 2*, we think we will have accomplished what we came before the Commission to do."

Based on the foregoing and similar comments during the morning, the Presiding Examiner made the following statement early in the afternoon (T. 65-6):

"Let me say that it is my understanding, based on the events of this morning, that the *applicant has in effect abandoned its application for an order with respect to stage 3*, and that I am no longer called upon, by the applicant, to make a ruling with respect to that stage.

"The evidence, which is being put forward, regarding stage 3, would therefore be of significance in this proceeding only as it may affect stages 1 and 2.

"I mention that because you may wish to consider that in submitting your own evidence."

Whereupon Staff Counsel depicted the extraordinary evidentiary dilemma which will result and which will affect all parties if the Staff III application remains pending (T. 66-68). Ordinary professional prudence would then require that other

[3426]

parties compose their evidentiary presentations with an eye to Stage III issues, as well as to Stages I and II issues. But this would be a plain exercise in futility if the Commission were to honor Applicant's request that a license issue for Stages I and II and that Stage III be indefinitely deferred for later consideration.

The anomalous position of the Applicant also poses for the Examiner a puzzle as to Stage III. Witness the following exchange (T. 74-5):

"PRESIDING EXAMINER: I am afraid that I may have been the one to use the word 'abandon.' It appears to have been as a result of a misunderstanding of what you said this morning.

"I believe I asked you whether you were asking for any order with respect to stage 3, and you told me that you were not.

"It seemed to me, therefore, that the evidence that you have presented would have significance only with respect to stages 1 and 2.

"If you are not asking for anything with respect to stage 3, I find it difficult to understand what I am to hear.

"MR. BRANNAN: Is it appropriate for me to respond at this time?

"PRESIDING EXAMINER: Yes, please do.

"MR. BRANNAN: I think, then, that my response was in error in saying that we didn't want anything with respect to stage 3, because *what I think we would want would be some kind of a reservation by the Commission that it would consider the additional licenses at future times*, on the basis of both the evidence which was already before the Commission, and if necessary, such additional evidence as would be required to support future requests."

[3427-3428]

[3427]

Nor did the anomaly dissipate as the Prehearing Conference continued. For example, note the following colloquy (T. 78-80):

"PRESIDING EXAMINER: You are not asking for a license with respect to stage 3 at this time, are you? Or are you?

"MR. BRANNAN: Mr. Examiner, I don't know quite how to respond to that, but I must and I will.

"I suppose in the final analysis we are trying to make a record upon which we can come to you and say, at this moment *we would like authorization of stages 1 and 2.*

"PRESIDING EXAMINER: And what order do you want me to make, if any, with respect to Stage 3?

"MR. BRANNAN: *That the Commission reserves the right to act upon Stage 3 at a later date. That is all we want.*"

Moreover, it is relevant to all of the foregoing to note here the Applicant's position that Stages I and II would be feasible without Stage III (T. 82-83, 85).

V

In such a context, Humble addressed a motion to the Presiding Examiner, confined restrictively to the Stage III application, seeking its dismissal because it had been abandoned by the Applicant, because Applicant indicated time and again that it would not seek to prosecute the Stage III application, and because Applicant repeatedly confessed that it does not seek or expect a Stage III license (T. 69-71, 75-7).

[3428]

When asked by the Examiner what order he was expected to make with respect to Stage III, the response of Applicant's Counsel was (T. 80):

"That the Commission reserves the right to act upon Stage 3 at a later date, *that is all we want.*"

It is obviously not necessary that the Stage III application continue indefinitely in a state of pendency to satisfy the Applicant's objective "to make our complete showing about our ultimate objective at this time" (T. 81). For the continued pendency - *ad infinitum* - of the Stage III application is plainly not necessary to the making of any such evidentiary presentation. Indeed, having confessed that it does not have a power contract for Stage III (T. 80), Applicant's Counsel readily agreed with the Examiner's indication that a further hearing would be required later as to Stage III (T. 81). No attempt was made to justify Applicant's curious insistence upon inclusion of Stage III in the hearing and the admitted necessity for a further repetitive hearing at some indefinite but later date.

In denying Humble's motion to dismiss the Stage III part of the application, the Examiner indicated that he was not empowered to grant such a motion which would have the effect of making a final determination of a portion of the proceeding.³

³See Section 1.12(d) of the Federal Power Commission's Rules of Practice and Procedure [18 C.F.R. 1.12(d)]. The Presiding Examiner made provisions for submission of a written motion which could be considered by the Commission (T. 90,97). In the interest of expeditiously simplifying and clarifying the issues in this case, this motion is submitted as much in advance as possible of the May 2 date fixed by the Presiding Examiner (T. 90, 97).

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VI

Dismissal of the Stage III application is required by consideration of procedural due process, by the necessity for orderly and timely discharge by the Commission of its duties under the Federal Power Act, by the forced but needless duplication in cost and effort which would otherwise be visited upon all parties concerned, and by coloration of

[3429-3430]

priority which would otherwise attach to Applicant's Stage III proposal.

The Applicant's position with respect to its Stage III proposal is an affront to the administrative process. The Stage III application was readily segregated physically by the Applicant and, separately from Stage I and II, filed on December 31, 1964. However, as filed and now pending, all three stages are comprised in one project because that is the way the Applicant proposed the project. And all three stages were duly noticed by the Commission as one project, and that notice was published on May 18, 1965, as required by law (30 F.R. 6743). Consonant with that notice, the Commission issued its call for hearing with respect to the entire three-stage project. In contempt of the Commission's notice and hearing order, the Applicant - with commendable candor - takes the position that it does not want to prosecute its request for a Stage III license at this time, that a further hearing thereon will be necessary at some undisclosed date in the future, and that all it wants from the Commission as to Stage III is an order which will reserve for the indefinite future

[3430]

decision on the Stage III part of the project. In this context, dismissal forthwith of the Stage III application is imperative.

If the Commission's docket were barren instead of overcrowded and if its employees had nothing to occupy their attention and if the public interest could be ignored, the Commission might afford the luxury of the academic exercise proposed by the Applicant with respect to Stage III - a protracted hearing pointed toward nothing but a reservation of decision until some undisclosed time in the future, after which a decision would be made but only following a further hearing admitted to be necessary. Merely to state such a suggestion is to require its rejection.

A failure to dismiss the Stage III application would be grossly unfair to the parties whose interests are threatened, including not only private parties such as Humble, but also the public as represented by the Staff and agencies of the State of Colorado. Applicant proposed that its Stage III application be allowed to continue in a pending state - though unprosecuted - throughout the forthcoming hearing, that it continue in such a state of suspense after a decision has been handed down, and that this strange posture extend on into the indefinite future, following which there would then be a further hearing and decision on the Stage III proposal. If such an administrative monstrosity were to be permitted, the interests of all affected parties would be exposed to jeopardy in at least two separate hearings on the same proposal, in the first of which the Applicant asks only for the reservation of Stage III

[3431]

for future decision. The public interest and due process forbid inflicting such a waste of effort and money, as to both the public and private interests concerned.

Finally, Applicant made no attempt to justify the request for a coloration of priority for its Stage III license application, a request implicit in the proposal that Stages I and II be licensed while Stage III be saved for fitting in at the Applicant's election in the future. Fairness to other possible applicants requires that the Stage III application be prosecuted or dismissed. And since the Applicant quite frankly admits that it has no wish to prosecute, there is no fair alternative to dismissal.

VII

WHEREFORE, for all of the foregoing reasons, Humble urges that the part of the application filed in Project No. 2289, denominated "Amendment to Application for License No. 2289 - Colorado (December 31, 1964) Sweetwater Hydroelectric Project Stage III, A Development for Peaking

[3431-3432]

Capacity Based on Pumped-Storage Generation, Supple-
mented

[3432]

by Stored Runoff," filed December 31, 1964, be dismissed.

Respectfully submitted,

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William H. Holloway

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Company

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Houston, Texas 77001

William S. Livingston

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Washington, D.C. 20005

Attorneys for

HUMBLE OIL & REFINING
COMPANY

By /s/ Bernard A. Foster, Jr.

Bernard A. Foster, Jr.

Dated at Washington, D.C.,
this 25th day of April, 1966

[3435-3436]

[3435]

BEFORE THE
FEDERAL POWER COMMISSION

ROCKY MOUNTAIN POWER COMPANY) Project
) No. 2289

*JOINDER OF COLORADO RIVER WATER CONSERVA-
TION DISTRICT IN HUMBLE'S MOTION TO DISMISS
STAGE III OF APPLICATION FOR LICENSE*

The Colorado River Water Conservation District, an intervenor herein, hereby joins in the motion of intervenor Humble Oil and Refining Company, to dismiss Stage III of the application for a license filed by the Rocky Mountain Power Company.

Rocky Mountain Power Company's application for Stage III affects a totally different watershed than the application for Stages I and II. Stages I and II would affect only Sweetwater Creek. Stage III, however, would see the Applicant extending its project transmountain into the Basin of the South Fork of White River, utilizing sites which the District has long been planning to develop. The Stage III proposal was a major reason for the District's intervention.

When Rocky Mountain Power Company filed its testimony and exhibits on March 1, 1966, the parties learned for the first time that the Power Company does not want a license now for Stage III at all. The March 1 filings seek to finesse District opposition by claiming that the water rights and the sites in the South Fork of White River involved in the Stage III application, on which there is head-on conflict, are not really before the Commission now. Humble's

[3436]

motion, in which the District joins, details the fashion in which the Power Company's counsel affirmed this status

[3436-3437]

for Stage III at the prehearing conference on April 12. He said that Stages I and II were feasible standing alone (Tr. 82-83, 85), and that the Stage III material had been presented just so there would be an understanding of what the Company might do in the future.

We are not speaking here to the two additional power units which the Company proposes to install in the Sweetwater power plant in Stage III, which is the context Applicant seemed to prefer to keep Stage III in at the prehearing conference (Tr. 71-74). Our problem is in the facilities proposed out of the Sweetwater watershed in the South Fork of White River. If these are not sought to be licensed now and if what is sought to be licensed now is not dependent on them, as Applicant says they are not, then the air should be cleared and the South Fork left alone through the dismissal of at least that portion of the Stage III application which affects the South Fork of White River.

Respectfully submitted,

April 26, 1966

Robert L. McCarty, of Counsel
Colorado River Water Conserva-
tion District
734 15th Street, N.W.
Washington, D.C. 20005

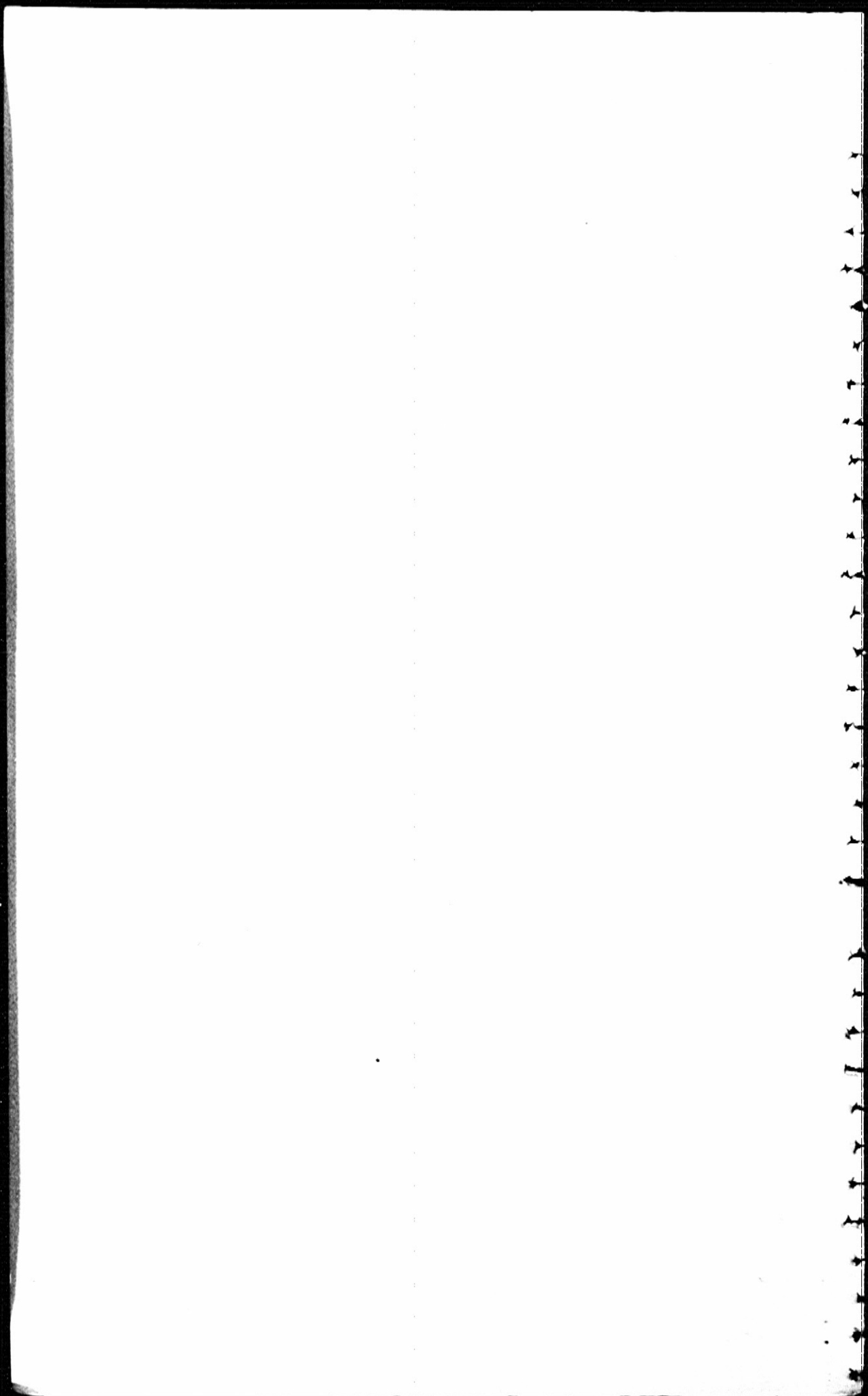
[3437]

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of §1.17 of the Rules of Practice and Procedure.

Dated at Washington, D. C. this 26th day of April, 1966.

/s/ Robert L. McCarty
Robert L. McCarty, of Counsel
Colorado River Water Conser-
vation District



JOINT APPENDIX - VOL. II

In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 21,138

ROCKY MOUNTAIN POWER COMPANY,
Petitioner,

v.

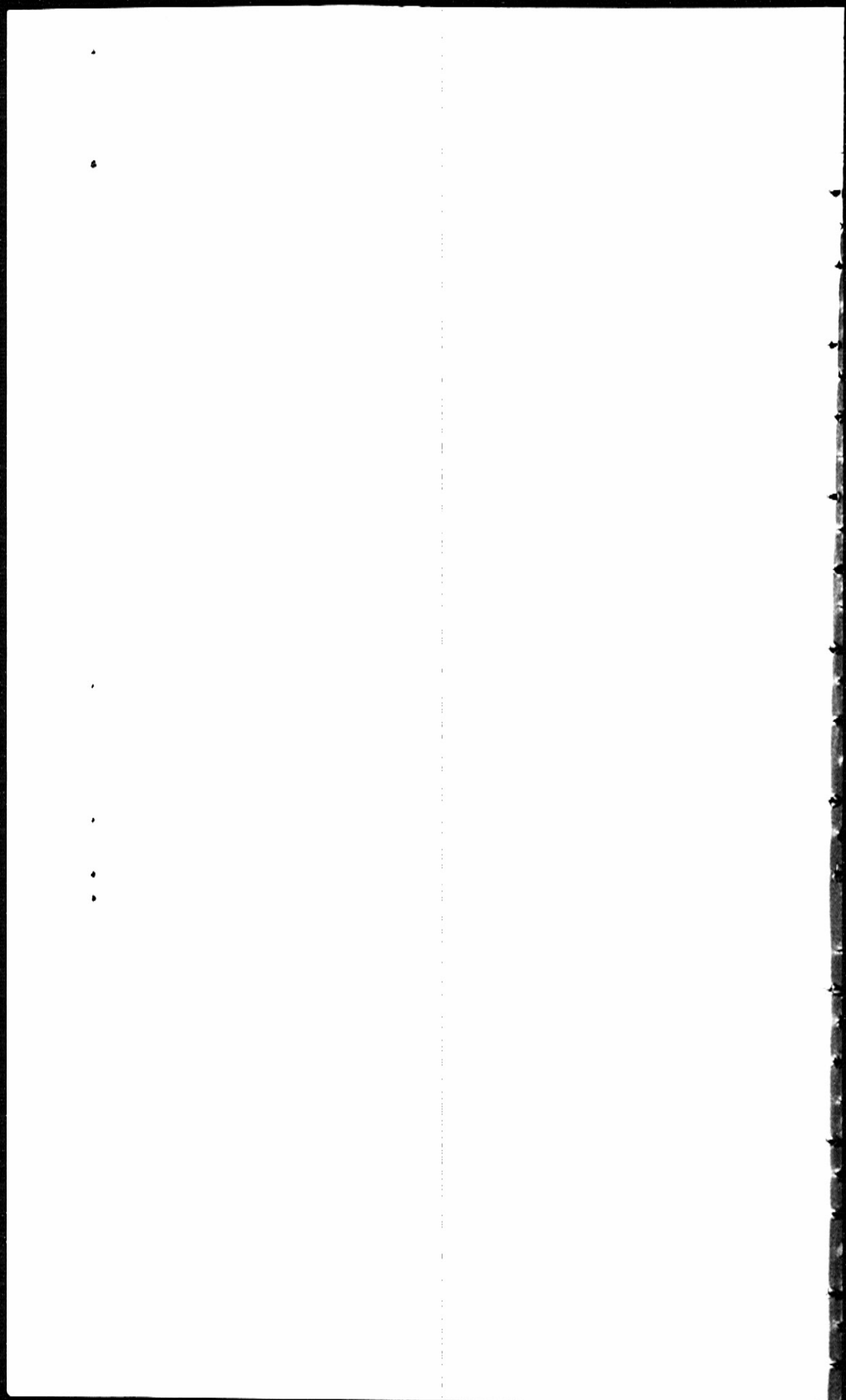
FEDERAL POWER COMMISSION,
Respondent.

**PETITION FOR REVIEW OF AN ORDER
OF THE FEDERAL POWER COMMISSION**

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 23 1968

Nathan J. Paulson
CLERK



(i)

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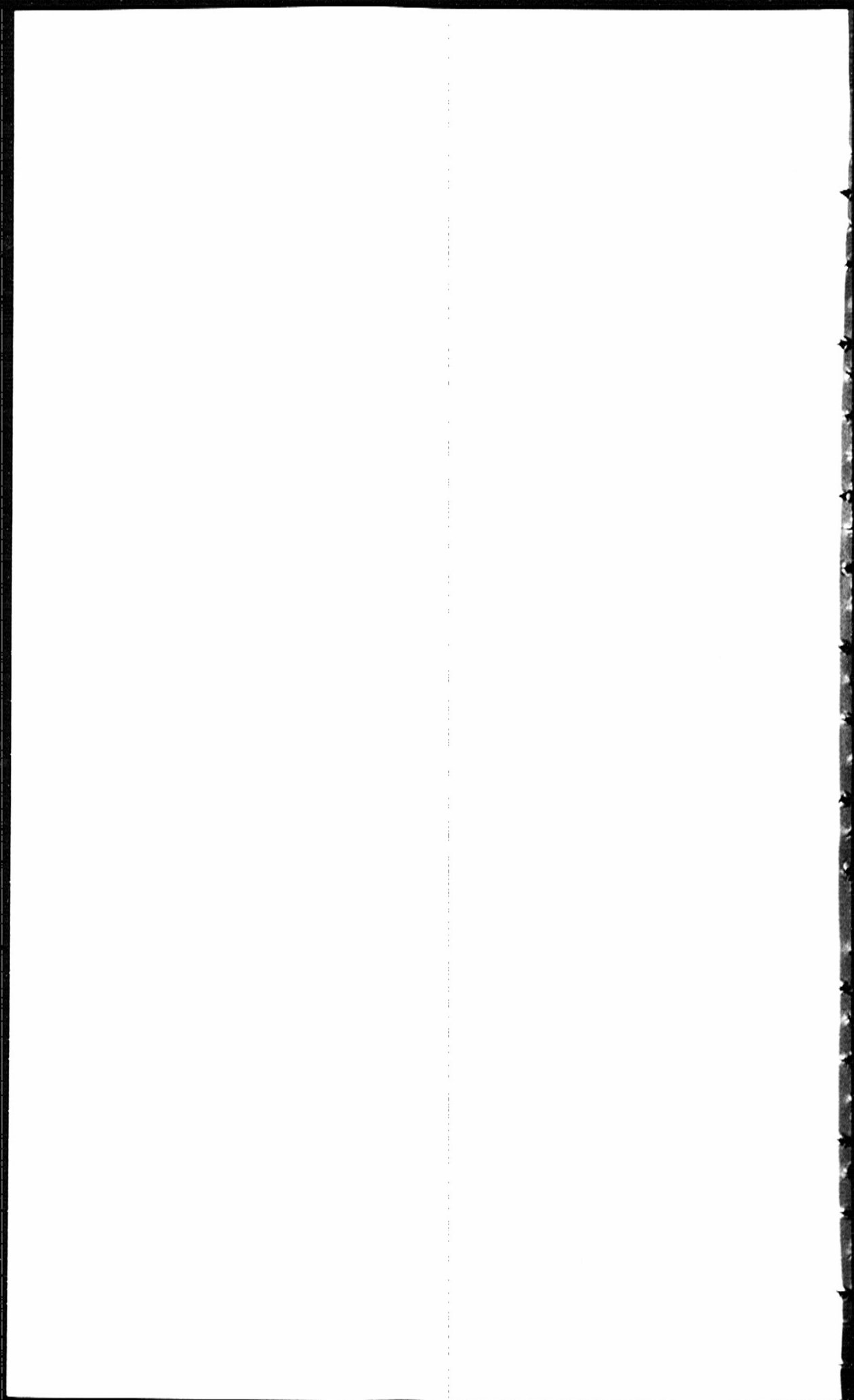
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[Received Aug 26 4 32 PM '66 Federal Power Commission]

BEFORE THE
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

JOINDER OF COLORADO RIVER WATER CONSERVA-
TION DISTRICT IN "MOTIONS OF UTAH POWER &
LIGHT COMPANY AND WESTERN COLORADO POWER
COMPANY TO DISMISS APPLICATION FOR LICENSE"

The Colorado River Water Conservation District, an intervenor herein, herewith joins in the motions of Utah Power & Light Company and Western Colorado Power Company dated April 22 to dismiss the pending application for license.

The failure of the Applicant to show financing and marketing ability (Motions 2 and 3) should alone cause the Commission to dismiss the application. The Commission's Order of August 19, 1965 fixing hearing summarized briefly the extensive series of filings in this case commencing with the original application on January 5, 1961, to the amended applications of December 23, 1963, November 30, 1964 and December 31, 1964 (Order, p. 1). The Order does not note the many letters sent to the Applicant seeking the correction of specific designated deficiencies, including lack of a showing of financing and marketing, such as the Commission letters of February 2, March 17 and April 24, 1961; March 30 and May 30, 1962; March 20 and July 29, 1963; and March 30 and July 23, 1964 (Tr. 37-38). The Commission, however, clearly had this history in mind in issuing its Order of August 19, 1965, when it noted:

[3439]

"... However, the application is *still* deficient as to information regarding the financing of the project,

[3439-3440]

and as to information on availability of markets for electric power, *and the Applicant has been requested to remedy these deficiencies.*" (Order, p. 2, emphasis added)

Then, in stipulating the procedure to be followed, the Commission in paragraph (B) 1 of its Order directed the Applicant to file its testimony and exhibits. Paragraph (B) 2 made it mandatory that:

- "2. The Applicant's filing shall include a full and complete statement of a definite plan for the financing of the project, and a full and complete statement of definite plans for the marketing of the electric power to be produced by the project. Failure to comply with this directive will constitute a basis for a motion to dismiss the application for a license for lack of completeness."

At the prehearing conference on April 12, 1966, in response to the questions of the Presiding Examiner, Applicant's counsel conceded that at that point the Company did not have a "complete presentation" on financing (Tr. 18); that he had no contracts for the sale of power; and that he could not say "how this project would be financed until we have consummated a contract with a responsible power user" (Tr. 20). These statements were made even before Staff Counsel's statement to the Examiner that Staff had to make it clear, in light of the Commission's Order of August 19, 1965, that:

[3440]

"The Staff regards the evidence on financing as still deficient and has grave doubts as to the sufficiency of the evidence with regard to market." (Tr. 38-39).

The District thinks it clear from the over five-year history on this matter in the public files of the Commission that the August 19, 1965 Order was intended to give the Applicant one final chance to make the requisite showings, fail-

[3440-3441]

ing which the application would have to be dismissed for lack of completeness. The Commission's letter of February 2, 1961, requesting further detail on engineering, financing and power market, advised the Applicant that the material offered was "not in sufficient detail to enable... a full understanding of the proposed project." The parties are faced with the same problem even today.

The Commission letters to the Applicant of March 30, 1962 and March 20, 1963 set deadlines of 60 and 90 days respectively in which the Applicant was to show evidence of ability to finance and power contracts, absent which dismissal would follow. In both instances further time appears to have been granted upon representations of active negotiations on both subjects, on which the Commission is still in the dark. The Commission's Order of August 19, 1965 was at the very least the third opportunity given Applicant. The District agrees with those moving to dismiss that the Applicant's opportunities have been more than ample, and that

[3441]

since the mandatory provision of the Order of August 19, 1965 above cited has concededly not been honored by the Applicant, the application should be dismissed forthwith.

Respectfully submitted,

April 26, 1966

Robert L. McCarty, of Counsel
Colorado River Water Conserva-
tion District
734 15th Street, N.W.
Washington, D.C. 20005

[3443, 3445]

[3443]

HUMBLE OIL & REFINING COMPANY
HOUSTON, TEXAS

Mr. J. H. Gutride, Secretary
Federal Power Commission
441 G Street, N.W.
Washington, D.C. 20426

Re: *Rocky Mountain Power Company*
Project No. 2289

Dear Mr. Gutride:

Enclosed are an original and ten copies each of the Prepared Testimony of Charles C. Fisk and Raymond D. Sloan, witnesses for intervenor, Humble Oil & Refining Company, in the above proceeding.

Copies of this testimony are being served on all other parties of record in this proceeding.

Sincerely,

CL:pas
Enc.

Carl Illig

cc: Mr. Arthur H. Fribourg w/enc.
Presiding Examiner
Federal Power Commission
441 G Street, N.W.
Washington, D.C. 20426

[3445]

[Received Apr 27 10 05 AM '66 Federal Power Commission]

ROCKY MOUNTAIN POWER COMPANY
PROJECT No. 2289

PREPARED TESTIMONY OF RAYMOND D. SLOAN

Q. Please state your name and address. A. Raymond
D. Sloan, P. O. Box 2180, Houston, Texas.

JA 304

[3445-3446]

Q. What is your occupation and current position? A. I am a geologist by profession and am currently employed by Humble Oil & Refining Company as Manager of its Shale Oil Project.

Q. Would you please state your education and professional experience? A. I received a B. S. degree in geological engineering from the University of Oklahoma in 1933. In 1933 and the early part of 1934 I was employed by the U. S. Coast and Geodetic Survey. In 1934 I was employed by The Carter Oil Company, later merged with Humble, as a geologist. During the succeeding years I held a number of geologic and management posts in the exploration departments or divisions of The Carter Oil Company. In August 1945 I was made Division Geologist of the Rocky Mountain Division of Carter, in 1946 was named Exploration Manager of this Division, and in 1955 was named Manager of the Western Division Exploration and Producing Operations of Carter. When Carter merged in Humble in January 1960 I was named Manager of the new Denver Area of Humble. I continued in this position until June 1964 when I was named Manager of Humble's Shale Oil Project. In this position I am responsible for all of Humble's land, mineral and water acquisitions and for coordination of research and development leading to the economic production

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of synthetic fuels by Humble. My acquaintance with water and its uses and water rights was acquired in part during my experience as a professional geologist; however, I have had considerable practical experience with these subjects, having acquired certain water rights in December 1950 as the result of the purchase of a ranch in Colorado. I have testified as a water expert in proceedings in the state courts of Colorado.

Q. What is the purpose of your testimony in this proceeding? A. The purpose of my testimony is (1) to indicate the magnitude of the future requirements of petroleum in the United States; (2) to show that a substantial portion

[3446-3447]

of these requirements will come from oil shale deposits in western Colorado; (3) to demonstrate the quantities of fresh water from the White River which will be needed in connection with the development of such oil shale deposits; and (4) finally to show that the public interest requires that no action be taken in this proceeding which will permit the curtailment of such water supplies by their application to other uses.

Q. Would you please state the current consumption of oil in the United States? A. Currently we are consuming approximately 11 million barrels of oil per day for all uses in the United States.

Q. Do you have an estimate of the requirements of oil in the United States in the immediate future? A. Yes, I do. In our organization we estimate that the United States will consume 18 million barrels of oil a day by the year 1985. This,

[3447]

I might add, is not our estimate alone but is confirmed by published estimates made by others.

Q. What will be the probable source of this additional requirement of oil for 1985? A. Oil imports might be increased modestly, and there will be additional oil discovered in the United States, but over and above these it is clear that by 1985 we must look to an additional resource such as oil shale to meet our requirements of petroleum.

Q. Do you have any estimate in terms of reserves within the United States that the oil industry must develop to meet indicated demand in 1985? A. We estimate that the oil industry must develop an additional 89 billion barrels of petroleum reserves within the United States in order to meet the demand in this country which is indicated for 1985. I might add that this is more liquid energy than the U. S. has consumed in the past 100 years. Of course to discover and develop such an amount of energy presents a tremendous challenge.

Q. You indicated that one of the sources of energy to

[3447-3448]

meet 1985 requirements could come from oil shale. Would you please state what you mean by oil shale? A. Oil shale is a source of fossil fuel of widespread occurrence throughout the world. It was formed by the deposition of mineral matter and organic debris in the bottom of shallow lakes and seas many millions of years ago. While shales are widely distributed in sedimentary rocks of all geologic ages, the most extensive oil shale deposits of potentially commercial grade are those in Brazil and the United

[3448]

States. Oil shale is a potential source of many products, many of which are currently obtained from petroleum.

Q. Where are the principal U. S. oil shale deposits located? A. The most important oil shale deposits in the United States, and probably in the world, occur in the Green River formation of the Eocene Age which underlies approximately 16,500 square miles in the Piceance Basin of northwestern Colorado, the Uinta Basin of northeastern Utah, and the Green River Basin of southwestern Wyoming. These shales have been estimated by the U.S. Geological Survey to contain shale oil reserves in excess of two trillion barrels in place.

Q. Of these three areas, which in your opinion is the most important? A. The most important oil shale province is the approximately 1,380 square miles of the Piceance Basin in northwestern Colorado. This comprises roughly 880,000 acres. This area is bounded on the south by the main stem of the Colorado River, on the east by the White River uplift, on the north by the White River, a tributary of the Colorado, and on the west by the Douglas Creek Arch.

Q. Of what magnitude are the oil shale reserves in western Colorado? A. While some estimates of these reserves have been as high as 1.5 trillion barrels, the richer portion averaging 25 gallons per ton and varying in thickness from 50 feet to 2,000 feet is estimated to have an in-place reserve of approximately 480 billion barrels. The recoverable re-

[3448-3450]

serves based on mining shale and using present-day technology for retorting and upgrading is estimated roughly at 280

[3449]

billion barrels of shale oil, or a little less than 60% of the shale oil in place in the richer section. This, I might add, compares with our present domestic crude oil reserves of 31 billion barrels.

Q. What are the present methods of shale oil recovery?

A. Currently there are two methods. The first is mining and retorting. In the mining and retorting process shale oil is recovered by crushing the shale and heating it to approximately 950°F, at which temperature about 70% of the kerogen decomposes into condensable hydrocarbons. The other method is known as in situ retorting. In the in situ, or in place, recovery of shale oil, the shale oil is recovered by introducing superheated steam or hot gases through a series of bore holes into a fractionated shale strata, or by introducing air and burning parts of the kerogen in place. The condensable hydrocarbons and gases are then recovered and processed, as in the case of mining and retorting.

Q. What do you mean by kerogen? A. By kerogen I mean the organic material which is present in the shale as a waxy mixture containing the hydrocarbon molecules.

Q. What is the current state of the shale oil industry in the United States? A. Technology has progressed to the stage where most experts in the field believe that oil from shale will soon compete on an economic basis with domestic oil in conventional deposits. Estimates on how soon this will happen vary. There are research installations

[3450]

presently in operation. Newspaper releases report one company's intention of placing a 50,000 B/D plant on stream before 1970. In our best judgment, by the middle or late seventies industry research and development work will justify expanding the shale oil industry on an economic basis. There are very few who question that oil from shale will

enter the competitive fuel market within the next decade.

Q. Are there any technical considerations involved in deriving a merchantable quality of oil from oil shale? A. Yes there are. Shale oil as it comes from the retort is a viscous, waxy liquid of low gravity and high pourpoint with a moderate sulphur content and a relatively high nitrogen content. In its raw state it is too thick to transport easily by pipeline and due to its nitrogen-oxygen-sulphur content cannot be used as a normal feedstock to the present-day refineries. However, with hydrogenation and the removal of nitrogen, sulphur and oxygen the raw shale can be transformed into a product equal or superior to many Mid-Continent grade crude oils. It can then be transported by pipeline and can be refined by present-day processes.

Q. What is the magnitude of investment required for a shale oil plant? A. An optimum size shale oil plant is probably one which will produce at least 50,000 barrels of oil per day. Such an operation would involve mining, crushing and retorting approximately 80,000 tons of oil shale per day. The capital investment for such a plant producing an upgraded oil equivalent to natural crude will be in the order of \$100 million. By comparison with conventional methods this operation

[3451]

would be comparable to finding, developing and producing a 350 million barrel oilfield at a constant rate of 50,000 B/D for 20 years.

Q. What research is currently being carried on in connection with shale oil production and recovery? A. Humble is currently involved in major research programs in laboratories of its research affiliate, Esso Research & Development Corporation. Humble also is conducting research at Anvils Point, Colorado near Rifle on the Colorado River, in facilities leased from the Department of the Interior. This program is jointly sponsored by several companies in conjunction with the Colorado School of Mines Research Foundation and is primarily directed towards further developing

[3451-3452]

retorting technology. Humble is also participating in other research programs involving shale oil recovery.

Q. What is the importance of water in the production of oil shale? A. Great quantities of fresh water will be required for the development of a large-scale shale oil industry. For example, the development of a two million B/D industry will require a minimum of 112,000 acre feet of fresh water per year, or approximately 1.2 barrels of water for each barrel of oil if only the mining, retorting and upgrading steps are conducted in the shale area. If economics dictate that the refining operations should also be conducted in the shale area, the water requirements will increase to 200,000 acre feet per year, or approximately 2.1 barrels of water for each barrel of shale oil produced. In either instance, the estimates include only the industrial water which will be totally consumed.

[3452]

Q. What would be the quantities of water required for in situ retorting of shale? A. If in situ methods using superheated steam are employed the quantity of water required would be substantially increased. This use could require approximately five barrels of water per barrel of oil processed.

Q. Can you give us some idea of the impact of shale oil development on total water consumption and on state and regional economy in the area of the development? A. A 2 million B/D shale oil development would bring from 500,000 to 1,000,000 people to the area being worked. Further, if we allow for a population of 650,000 people to be associated with shale oil by-products and supporting industry, the supplemental domestic and industrial water requirements may be expected to approximate 165,000 acre feet per year. Of this amount some 55,000 acre feet would probably be totally consumed and the remainder, or 110,000 acre feet per year, will be return flow. Combining the shale oil water requirements with municipal water usage, the total water requirements per 2 million B/D shale oil operation may

[3452-3453]

be expected to range from 277,000 to 365,000 acre feet per year, of which 167,000 to 255,000 acre feet would be totally consumed, and 110,000 acre feet would be return flow.

Q. Would you comment upon the effect of these developments on the regional economy? A. The effect on the regional economy will be similar to the beneficial effect produced in Texas and Louisiana by oil and gas production. The

[3453]

economy will be greatly augmented and increased and stimulated in every way.

Q. I believe you said that the most promising area of shale oil deposits in the United States are in the Piceance Basin in western Colorado. Is that correct? A. Yes, that is so.

Q. Has your company acquired any shale oil reserves in this area? A. Yes, we have purchased substantial acreage containing shale oil reserves. We conservatively estimate our recoverable reserve of shale oil in the Piceance Basin to be six billion barrels.

Q. Does Humble have any plans to produce and refine shale oil from its reserves in the Piceance Basin? A. Yes, as soon as it becomes economic to do so, and we think this will not be later than the mid-1970's.

Q. What arrangements or undertakings has Humble entered into with reference to acquiring the necessary supplies of fresh water on the White River to conduct its proposed shale oil operations in the Piceance Basin? A. Humble's water rights on the White River have been fairly well detailed by Mr. Charles Fisk in his testimony filed in this proceeding. I will not duplicate this testimony except to verify its correctness and to state that Humble has been as diligent in seeking to acquire rights to fresh water on the White River for its proposed shale oil operations as it has been in acquiring oil shale reserves. This is natural in view of the fact that large quantities of fresh

[3454-3455]

[3454]

water are required to conduct shale oil operations.

Q. In terms of quantity, what is the magnitude of Humble's water rights on the White River? A. Considering only the projects where Humble's water rights are clearly senior, I estimate that we have acquired 51,000 acre feet per year on the White River. This would make available to Humble sufficient water to enable it to produce and process approximately one million barrels of oil per day from shale. This does not take into consideration the domestic requirements and other uses which might be necessary in connection with a shale oil project.

I do not want to give the impression that Humble's water rights on the White River are limited to 51,000 acre feet per year. Humble has an interest in other water projects on the White River which may yield substantial additional quantities of water.

Q. I hand you Exhibit 35 for identification entitled "Portion of Northwest Colorado Showing Oil Shale Area and Headwaters of White River". Was this Exhibit prepared under your direction? A. It was.

Q. Will you describe this Exhibit? A. This Exhibit consists of a map of the Piceance Basin in western Colorado showing the shale oil reserves and surface interests acquired by Humble. Also indicated on the Exhibit are the reservoir sites, proposed pipelines, and points of diversion pertaining to Humble's water rights on the White River. The map indicates that we have acquired sources of a water supply either in the area in which the actual shale oil

[3455]

mining or retorting operations would be carried out or at locations reasonably close to such points from which water can be transported by pipeline or gravity flow to the site of such operations. By an over-lay this Exhibit also shows the proposed projects of Rocky Mountain Power Company.

Q. What would happen to Humble's plans to develop its shale oil reserves in the Piceance Basin if a substantial part

[3455-3456]

of the fresh water supplies from the White River it has arranged for are not available? A. Humble's operations would be substantially impaired or prevented altogether. Fresh water from the White River is necessary to enable Humble to carry out its plans. If the Rocky Mountain Power Company is able, by condemnation or otherwise, to acquire Humble's water rights on the White River, Humble will not be able to carry out its plans for oil shale development.

Q. Could not fresh water be obtained from the Colorado River and delivered into the Piceance Basin for shale oil operations? A. Yes, but at too great a cost. To do this would require that water from the Colorado River Basin be pumped uphill between 2,000 and 3,000 feet to the White River Basin. This would be quite costly and could be fatal to the feasibility of Humble's shale oil project in the Piceance Basin. Also, water delivered from the headwaters of the White River to the Piceance Basin by pipeline would be of much better quality than water diverted from the Colorado River adjacent to the Piceance Basin.

Q. Is Humble the only company which has acquired shale oil reserves in

[3456]

western Colorado? A. Quite the contrary. A number of companies have been actively engaged in acquiring shale oil reserves. A development of this kind is obviously not confined to a single company. Undoubtedly others visualize the petroleum supply situation of the future much as we do and are laying plans for development of an additional source of energy.

Q. Do you have any precise knowledge of what other companies are doing? A. There are no published sources regarding the holdings of other companies. However, as I indicated, a number of companies are engaged in the joint research effort now being carried out at Anvils Point, Colorado. And there is every indication that some of these companies are proceeding as we have done to acquire shale oil reserves in western Colorado and are proceeding with plans

[3456-3457]

to develop them as economics indicate that such are feasible.

Q. Does the position you are taking in this proceeding have a relation to national defense? A. Yes, it does. In any national emergency our country will need enormous quantities of oil. The military success of the United States and her allies during World War I and World War II was largely the result of having adequate supplies of petroleum products available from domestic sources. In any future emergency it is obvious that we will need an adequate supply of oil resources located within the continental United States so that they will be available for ready use. Clearly then, the development of oil shale as a supplemental

[3457]

source of liquid energy is directly related to the defense of our country.

Q. Please state your summary conclusions. A. I have indicated the magnitude of the future requirements of petroleum in the United States by the year 1985. I have shown that even though imports are increased and more oil is found in the domestic United States, a substantial portion of these additional requirements will have to come from sources such as oil shale. I have shown that the largest deposits of shale oil in the United States are those in western Colorado, particularly in the Piceance Basin. I have also indicated the order of magnitude of Humble's ownership of shale oil deposits in this area, and finally I have shown the substantial quantities of fresh water to be required from the White River in order to enable Humble and others to proceed with development of their shale oil deposits. I have indicated the magnitude of Humble's water rights on the White River. From this I think it follows logically that the public interest and national security require that the Federal Power Commission in this proceeding not take any action which will be detrimental to the development of such shale oil deposits. In my opinion, there is an overriding public interest which requires that Humble's water rights in the

[3457, 3460-3461]

White River be unimpaired so that it may utilize them in the development of shale oil deposits in the Piceance Basin.

[3460]

[Received Apr 27 10 06 AM '66 Federal Power Commission]

ROCKY MOUNTAIN POWER COMPANY

PROJECT No. 2289

PREPARED TESTIMONY OF
CHARLES C. FISK

Q. Please state your name and address. A. Charles C. Fisk, 2701 Alcott Street, Denver, Colorado.

Q. What is your occupation or profession? A. I am a consulting engineer, specializing in water supply, water rights and hydrology.

Q. Are you a registered professional engineer and, if so, in what state? A. Yes. I am registered in the State of Colorado.

Q. Would you please state your educational qualifications? A. I received a B. S. degree in Agriculture from the University of Wisconsin in 1941, a B. S. degree in Civil Engineering from the same University the following year.

Q. Would you please state briefly your professional experience? A. In the year 1942 I served as a junior hydraulic engineer with the Tennessee Valley Authority. After some wartime experience in the weather service of the United States Air Force, I served as a hydraulic engineer for water project planning with the Denver office of the United States Bureau of Reclamation during the years 1946-1950. During the years 1950-1955, I continued with the United States Bureau of Reclamation as assistant chief of river operations for the western division of the Missouri River Basin Project. During this same time I assisted in operation of the Colorado Big Thompson

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Project, the North Platte Project and the Kendrick Project. During the years 1955-1961 I served as water supply engineer for the Denver Water Board. My duties and responsi-

[3461-3462]

bilities in that capacity included the responsibility for adequate supplies of raw water available to meet Denver's current and long-range water need, operational control of Denver's reservoirs and other raw water facilities, water rights investigations, estimating future water requirements, planning and development of additional sources of water supply, and testifying as an expert in litigation involving water rights. In all phases of my work I have been required to make feasibility studies from an economic standpoint of many proposed projects.

Q. What is your present position? A. I am the owner of the firm known as Charles C. Fisk, Consulting Engineer.

Q. How long have you been so engaged? A. Since entering private practice in June of 1961.

Q. Is your consulting work limited solely to the field of water supply, water rights and hydrology? A. Yes, it is so limited.

Q. What is your relationship to Humble Oil & Refining Company? A. I am retained by that company for specialized consulting work in the field of water supply, water rights and hydrology.

Q. How long have you been so employed? A. My first work for Humble was in July, 1962. During the past two years I have devoted a substantial portion of my time to work for Humble in connection with the development of an adequate water supply for the

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potential shale oil industry in western Colorado.

Q. Would you please describe, in general terms, your work for Humble Oil & Refining Company? A. Yes. Most of my work has been in the White River Basin in Colorado. I have made a detailed investigation and analysis of water rights, water supply and the hydrology of Piceance Creek, the White River between Buford and the state line and the South Fork of the White River. I have also done some work of a similar nature for Humble in the Colorado River Basin.

Q. Are you familiar with the Rocky Mountain Power

Company's proposed Sweetwater Hydroelectric Project, particularly including its water rights and its water supply capabilities? A. Yes, I am.

Q. Have you analyzed the water rights and water producing capabilities of Rocky Mountain Power Company's proposed Meadows Reservoir on the South Fork of the White River? A. Yes, I have. This is a key Stage III facility.

Q. What is the extent of your knowledge of Stage I and Stage II of Rocky Mountain Power Company's proposed Sweetwater Hydroelectric Project? A. I have a general understanding of proposed Stage I and Stage II developments, based largely upon review of information prepared by Rocky Mountain Power Company in various reports and documents, including those in this proceeding.

Q. Would the water facilities proposed by Rocky Mountain Power Company for Stages I and II of the Sweetwater Hydroelectric Project have any

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adverse effects upon Humble's water supply capabilities in the White River Basin? A. Yes, unless adequate safeguards are imposed by the Federal Power Commission in granting licenses for these facilities.

Q. What do you mean by adequate safeguards? A. By adequate safeguards I mean (a) that any approval of Stage I and Stage II facilities should be on conditions that such would not in any way imply, or grant, approval of Stage III facilities, and (b) if conditions or operating limitations aimed at protection of fish and wildlife are attached to the license for Stage I and Stage II facilities, these conditions, or limitations should be confined to streams in the Colorado River Basin where Stage I and Stage II facilities are proposed to be located. The application of Rocky Mountain Power Company is for a license to construct and operate Stage I and Stage II facilities only. However, the supporting testimony, reports, data and exhibits submitted by Rocky Mountain Power Company encompass the entire project, in-

[3463-3464]

cluding Stage III facilities in the White River Basin and seemingly assume their eventual licensing. Apparently Stage III is deemed necessary to the economic feasibility of Stage I and Stage II.

Q. In your discussion of adequate safeguards, you mentioned conditions or limitations aimed at protecting fish and wildlife. Could you expand on that? A. Yes. Any license granted by the Commission for Stage I and Stage II facilities should include conditions agreeable to the U. S. Fish &

[3464]

Wildlife Service and to the Colorado Department of Game, Fish and Parks. Such conditions should provide for minimum bypasses at proposed points of diversion or storage, minimum permanent pools at proposed reservoirs and other operating limitations designed for protection of fish and wildlife resources. The conditions or limitations currently proposed by the U. S. Fish & Wildlife Service relate not only to Stages I and II, but also to Stage III of the Sweetwater Hydroelectric Project, including limitations on proposed facilities to be located on the South Fork of the White River. Among other things, the construction of the proposed Stage III facilities would adversely affect Humble's interests, and it would appear at this time that their consideration is not only premature but is not sought by the applicant.

Q. Turning now to the matter of possible financial dependency of Stage I and Stage II on Stage III, could you expand on that? A. Yes. Stage I and Stage II developments should stand on their own feet. In other words, there should be a firm and clear showing as to how Stage I and Stage II operations in themselves will amortize the project indebtedness and yield a profit over the amortization period.

Q. In your opinion, have Rocky Mountain Power Company engineers provided the firm showing of financial feasibility for Stage I and Stage II that you have described?

A. No, they have not. If I were investing money in this

[3464-3466]

project or passing upon its economic feasibility, as the Commission must do, I

[3465]

would want to have available for inspection on a detailed financial analysis showing anticipated income and expenses on an annual basis, extending from the year that money was first committed to construction of the project to the year that project indebtedness was amortized.

Q. You referred to Humble's water rights on the South Fork of the White River. Would you identify these water rights? A. Humble has water rights senior to Rocky Mountain Power Company's filings in the so-called Stillwater Project. These rights were acquired by an option agreement from Winston Wheeler, L. E. Phillips, Jr., and Fourteen Mile Land Company. They relate to the Stillwater Reservoir, Stillwater Power Plant, and South Fork-Piceance Pipeline adjudicated as Priorities 575 and 577; 576; and 578, respectively, in the action styled in the matter of the adjudication of priority rights in the Use of water for irrigation and other beneficial purposes in Water District No. 43, State of Colorado, Civil Action No. 999 in the District Court in and for the County of Rio Blanco. The decree in this action grants the following rights:

- (a) Stillwater Reservoir; priority No. 575; appropriation date 5-29-55; 1,804 acre feet.
- (b) Stillwater Reservoir first enlargement; priority 577; appropriation date 5-29-55; 10,744 acre feet.
- (c) Stillwater Powerplant; priority 576; appropriation date 5-29-55; 300 second feet.
- (d) South Fork-Piceance Pipeline; priority 578; appropriation

[3466]

date 5-29-55; 70 second feet.

In addition, Humble has acquired senior rights claimed

[3466-3467]

by Fourteen Mile Land Company to impound 40,000 acre feet of water annually in the proposed South Fork Reservoir for the proposed South Fork Pipeline at a location on the south fork of the White River below the mouth of Lost Solar Creek. Adjudication of these claims is pending in the District Court of Rio Blanco County, Colorado.

Subsequent to the filing of its petition in intervention in these proceedings, Humble acquired an option from the Colorado River Conservation District for the major interest in the proposed Rio Blanco Reservoir.

Q. Would the construction and operation of Rocky Mountain Power Company's Stage III facilities have an adverse effect on Humble's water rights on the White River?

A. Yes. There would be significant adverse effects. In the first place, Rocky Mountain Power's Meadows Reservoir would occupy the same site as Humble's Rio Blanco Reservoir. The Federal government owns the land which either reservoir and its appurtenant facilities would occupy. If the Federal Power Commission authorizes the Meadows Reservoir, I think it fair to assume that Rocky Mountain Power Company would urge this as the basis for securing the necessary rights of way and permits from the Interior Department so as to implement the license granted by the Commission.

Therefore the granting of Rocky Mountain Power's application with

[3467]

regard to Stage III facilities would in practical effect operate to supplant Humble's rights in the Rio Blanco Reservoir. Also Humble has interests in other reservoirs and other water rights which would be in conflict in whole or in part with Rocky Mountain Power's proposed Stage III facilities.

More than this, however, it is my understanding that if the Commission grants Rocky Mountain Power's Stage III facilities that Company would as a matter of law have authority to condemn Humble's Stillwater Project and facilities and indeed all of its water rights to the White River.

[3467-3468]

I think it is apparent that these developments would have immediate significant adverse effect on the water supply necessary to Humble's development of its shale oil resources in the Piceance Basin.

Q. Do you have any other observation regarding Rocky Mountain Power's proposed Meadows Reservoir? A. Yes. I disagree with Rocky Mountain Power Company's estimates of the gross water supply available to Meadows Reservoir. Rocky Mountain Power Company has estimated that the average annual gross water supply at Meadows Dam site is 78,456 acre feet. This does not include diversions from Wagonwheel and Patterson Creeks. My comparable estimate would be about 60,000 acre feet per year.

Q. To what do you attribute the difference in these estimates of gross water supply? A. Most of the difference is attributable to an adjustment that I have made for runoff inflation caused by the beetle kill of trees. I

[3468]

found that there was a severe spruce beetle outbreak on the White River watershed above Buford during years 1941 through 1946, which has significantly increased the runoff of the South Fork in subsequent years. Streamflow records during the 1952-1964 study period were corrected for this unnatural condition, in order to stimulate normal conditions that are expected to return by about 1980. After investigation, I concluded that a 20% reduction in estimated historical (1952-1964) average annual runoff of the South Fork at and above Stillwater Dam site would adequately adjust inflated South Fork runoff conditions existing since 1946 to pre-1946 and post-1980 normal conditions.

Q. Do you disagree with other aspects of Rocky Mountain Power Company's estimates of the water supply available to Meadows Reservoir? A. Yes. I disagree with Rocky Mountain Power's estimate of the net available water supply at Meadows Reservoir.

[3468-3469]

In Rocky Mountain Power Company's Exhibit 100-02 (Vol. II, Amended Application, Stage III), a significant statement appears on Page 2 of Exhibit 8: "That portion of the project area draining naturally into Meadows Reservoir (Area 1 of Sheet 1) will produce an average annual net yield computed at 81,000 acre feet." Another statement appearing on Page 4 of Rocky Mountain Power Company's Exhibit H, explains the intended meaning of net yield: "In computing these quantities of water available for storage from the four areas of the project drainage, allowance has been made in every case for due maintenance of statutory stream flows and for releases necessary

[3469]

to satisfy prior decrees downstream. Corrections have also been made for evaporation and seepage losses, thus the quantities stated are net volumes." Later in this same Exhibit 100-02 (Exhibit N, Page 9), there is an income projection for stage III which includes the sale of 110,000 acre feet of water at \$30 per acre foot. I assume that this 110,000 acre feet of so-called saleable water includes the 81,000 acre feet of average annual net supply estimated for Meadows Reservoir and that it is a significant factor in Rocky Mountain Power Company's showing of feasibility for Stage III facilities, including Meadows Reservoir.

In Rocky Mountain Power Company's subsequent hydrologic study (Exhibit 100-20), the average annual available supply at Meadows Damsite was estimated at 78,546 acre feet. This explanatory statement was made on Page 54 of Exhibit 100-20: "The above derived quantities (78,546 acre feet) include reservoir releases for downstream senior water rights, fish flows and losses. These releases and losses will be reflected in a subsequent study of the operation of the reservoirs." In other words, Rocky Mountain Power evidently does not now have a reliable analysis and estimate of the net water supply available for storage at Meadows Reservoir. Lacking this, there is no present basis for projecting revenue from the sale of storable water at Meadows Reservoir.

[3469-3470]

Q. Would this deficiency in net water supply estimates affect the feasibility of Rocky Mountain Power Company's Stage III development? A. It certainly would affect the feasibility of Stage III development.

[3470]

Rocky Mountain Power Company cannot sell water that it does not have. It cannot store water at Meadows Reservoir that has to be bypassed. Since Rocky Mountain Power Company has not analyzed the bypass requirements at Meadows Reservoir and has not made any deductions for required bypasses, the Company does not know what the net storable supply at Meadows Reservoir actually amounts to. Without this knowledge, there is no basis for projecting sales of water and there is no way of making a credible estimate of Stage III financial feasibility.

Q. How, then, would you summarize your testimony in this proceeding? A. I have undertaken to point out that that Stage III of Rocky Mountain Power Company's proposal is interrelated with Stage I and Stage II and even though only Stage I and Stage II were being presently adjudicated, care should be taken through the imposition of the appropriate conditions that favorable action on Stage I and Stage II does not imply approval of Stage III. I have also identified Humble's water rights in the South Fork of the White River and shown how the construction and operation of Rocky Mountain Power's Stage III facilities would have an immediate adverse effect on Humble's rights and consequently interfere with its proposed development of the oil shale reserves in the Piceance Basin area. Finally, I have pointed out that in my opinion Rocky Mountain Power's estimate of water supplies available for its Meadows Reservoir is substantially too high and that I have serious doubts as to the economic feasibility of Rocky Mountain Power's Stage III proposals.

[3474]

[3474]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Lee C. White, Chairman; L. J.
O'Conner, Jr., Charles R. Ross,
David S. Black, and Carl E. Bagge.

Rocky Mountain Power Company) Project No. 2289

ORDER VACATING PRESIDING EXAMINER'S
RULING AND GRANTING MOTION
TO STRIKE

(Issued April 29, 1966)

On April 14, 1966, Commission Staff Counsel filed a motion to reverse the ruling of the Presiding Examiner denying staff motion filed March 18, 1966, to strike certain material submitted as exhibits in this proceeding. The Commission's order of August 19, 1965, fixing hearing and prescribing procedure provides in subparagraph 6 of paragraph B that "no exhibits, except those of which official notice may properly be taken shall contain narrative material other than brief explanatory notes". The filings submitted by Rocky Mountain Power Company (Applicant) on March 1, 1966, contain narrative material submitted as part of its exhibits in violation of the Commission's procedural order. The procedural order also provides that all of the testimony except exhibits shall be in question and answer form.

The procedure prescribed by the Commission's order of August 19, 1965, is intended to eliminate any cause which might otherwise exist for a protracted hearing by requiring all parties to submit a full and complete direct case in writing as clearly as possible and in advance of the hearing in order to eliminate the need for recesses and extensive cross-examination. The situation presented by Staff's motion, and by the Interveners which have joined in that motion, shows the need for the procedure prescribed by the Commission.

[3474-3475]

The Applicant indicated at the prehearing conference (Tr. 60) and in its response filed April 25, 1966, that it is prepared and is willing to resubmit its direct case pursuant to the Commission's procedural order.

DC 23

[3475]

The Commission finds:

It is appropriate and in the public interest in carrying out the provisions of the Federal Power Act that the aforesaid motion to strike be granted, and that the Applicant be granted a reasonable period to resubmit its direct case.

The Commission orders:

(A) The aforesaid motions to reverse ruling of presiding examiner and to strike certain material submitted as exhibits by the Applicant as part of the direct case, are granted.

(B) The Applicant is given until May 23, 1966, to resubmit his direct case in accordance with the aforesaid procedure.

(C) The Intervenors and Commission Staff are given until June 13, 1966, to file their direct cases in accordance with the aforesaid procedure.

(D) Motions to strike shall be filed with the Presiding Examiner by June 20, 1966, with replies to such motions to be filed by June 27, 1966.

(E) The hearing be held beginning on July 6, 1966.
By the Commission. Chairman White not participating.
(S E A L)

Joseph H. Gutride,
Secretary.

[3478]

[3478]

May 23, 1966

Federal Power Commission
441 G Street, N.W.
Washington 25, D.C.

Re *Project No. 2289 - Colorado.*
Rocky Mountain Power Company.

Gentlemen:

Pursuant to the Commission's order in this proceeding dated April 29, 1966, there are transmitted herewith as a resubmission the originals and ten copies of the following documents, in support of the application for a license:

Testimony: Volumes I, II, and III.

Exhibits: Volumes I, II, III, IV, and V.

Service of copies of the subject documents upon all participants of record has been duly accomplished in keeping with the Commission's Rules of Practice and Procedure.

Very truly yours,

Smith W. Brookhart
Attorney for Applicant

bcc: Charles F. Brannan, Esq.
Mr. Paul G. Van Sickle
Mr. Robert B. Craig

[3607]

[3607]

KUHN, LOEB & CO.

COPY

EXHIBIT 100-06a
One Sheet Only
Project No. 2289
Rocky Mountain Power Co.
Witness: BRANNAN

May 18, 1966

Rocky Mountain Power Co.
Oak Creek Power Co.
East-West Intertie, Inc.
1575 Sherman Street
Denver, Colorado 80203

Attention: Charles F. Brannan

Dear Mr. Brannan:

Since our letter to you of February 28, 1966, we have had occasion to study the project further and to see the "Memorandum of Intentions" executed by your group and the Consumers Power District. We understand also that there is a likelihood that the financing will be through means of a non-profit corporation through the issuance of securities exempt from Federal income tax.

It is our opinion that if all of the conditions set forth in our previous letter are met and a suitable tax-exempt issue were to be marketed at this time, the effective cost of money would be between 4 1/2 - 5%, well within the cost of capital projected in the engineering studies. Under such circumstances, it is our opinion that a financing would be feasible and this firm would be prepared to undertake the formation and management of a national group of underwriters and dealers of standing and ability to buy and distribute all of the bonds which would be required to assure completion of the project.

Very truly yours,
Jerome S. Katzin

JA 327

[4305, 4309-4310]

[4305]

* * *

TESTIMONY

* * *

By Charles F. Brannan

[4309]

* * *

8. Q. The material filed on December 31, 1964, involves an entity identified as the Oak Creek Power Company. Describe this corporation and its relation to Rocky Mountain Power Co. and Stages I and II. A. Oak Creek Power Company was organized in August 1964 under the laws of the State of Delaware. Since its incorporation it has been engaged in developing a thermal electric power producing facility situated on the coal

[4310]

deposits in Routt County, Colorado. It is proposed that Oak Creek Power Company will supply the power for the pumped-back phase of the operation of the Sweetwater Project described in Stages I and II, will provide similar power for the pump-back phase of Lost Solar hydroelectric plant constituting a part of Stage III and will also supply electric energy to consumers of both its and the hydroelectric power.

* * *

9. Q. The material filed on December 31, 1964, also refers to a corporation known as East-West Intertie, Inc. Describe East-West Intertie, Inc. and its relationship to the Sweetwater Project. A. East-West Intertie, Inc. was organized under the laws of the State of Delaware in August 1964 for the purpose of establishing an extra high voltage transmission line from the Sweetwater and Oak Creek facilities to points of use in the State of Nebraska and neighboring states. * * *

[4315]

* * *

A. The principal market for the power to be generated by the hydro and thermal electric generating facilities will be Nebraska and its neighboring states.

The power is also being offered to users in the States of Kansas and South Dakota. It has also been contemplated that power may be made available east of the Missouri River by and through coordination with the existing facilities in Nebraska.

[4316]

16. Q. Have any consumers within this market evidenced an intention to purchase power from Rocky Mountain Power Co.? A. Yes. As a result of negotiations with Consumers Public Power District, headquartered at Columbus, Nebraska, a Memorandum of Intentions has been entered into by and between Consumers Public Power District and Rocky Mountain Power Co. and its two affiliates hereinabove identified, under date of May 16, 1966, concerning the purchase and delivery of the power to be generated by these facilities; subject to the granting of this application. This Memorandum of Intentions is identified as Exhibit 100-4. In addition, the Applicant is in receipt of a letter dated May 18, 1966, from the Nebraska Electric Generation and Transmission Cooperative, Inc. indicating its intention to negotiate a purchase of the power as soon as firm prices can be developed. This letter is included as Exhibit 100-04A.

17. Q. What arrangements, if any, have been made for financing the construction of the facilities proposed in Application No. 2289?

[4317]

A. We have kept the firm of Kuhn, Loeb and Company, 30 Wall Street, New York City, advised from time to time of the progress being made in the development of this project, and in particular, progress made toward the marketing of the power to be generated.

[4317, 4658]

This financial house has been supplied with a copy of the Memorandum of Intentions of May 16, 1966, between Consumers Public Power District of Nebraska and this Applicant and upon the basis of that information and other information supplied to them, has addressed a letter to Rocky Mountain Power Co. and its affiliates, supplementing its previous letter of January 27, 1966, identified as Exhibit 100-06, further describing the conditions under which the financing of the construction of the facilities described as Stages I and II are feasible and will be undertaken by them. This supplemental letter is dated May 18, 1966, and is identified as Exhibit 100-06A.

* * *

[4658]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

MOTION OF PUBLIC SERVICE
COMPANY OF COLORADO TO
DISMISS APPLICATION

COMES NOW Public Service Company of Colorado, an Intervenor herein, and files this Motion to Dismiss the pending application for license, and requests that the Examiner certify this motion to the Commission for disposition. This Intervenor also moves that an order be made and entered deferring until at least June 27, 1966 the filing of the direct cases of the Intervenor and Staff in order to provide time for disposition of this Motion to Dismiss. In support of the foregoing, this Intervenor shows as follows:

This Intervenor and others have heretofore joined in the Motion to Dismiss the pending application filed by Utah Power and Light Company and Western Colorado Power Company dated April 22, 1966, which motion has not to date been acted upon. This motion is a reaffirmation there-

[4658-4660]

of, and such Motion to Dismiss and Joinders therewith are incorporated herein.

The application for a hydroelectric power license which

[4659]

is the subject matter of this proceeding was filed January 5, 1961, five years and five months prior to this date. Applicant has had since that date ample time and opportunity to prepare its case and compile the information required of it for the license which it seeks.

Applicant has, over the years, since its initial filing, been advised repeatedly by the Commission and the Staff of the Commission of the deficiencies in its application and the further information which the application under the rules of the Commission was required to furnish. See Transcript, pages 37 and 38, for itemization of these requests. (Transcript references are to Pretrial Conference held April 12, 1966.) Instead of furnishing such required information as a part of its application, Applicant instead embarked upon a series of revisions, modifications and amendments to its projects and applications, all the while failing and neglecting to remedy the continued omissions in its application, and thus evincing a seemingly calculated effort to keep the staff and the Commission in the dark as to the fundamentals of any of the practical aspects of its scheme.

Thus, while the Commission and the Staff were giving

[4660]

every opportunity to Applicant to come forward with some information about where the power to be generated was needed, who, if anyone, wanted it, and how the whole thing would be paid for, Applicant instead vacillated from one alternative to another, changing and rechanging the scope of the project, displaying what, in another context, would be referred to as excellent broken-field running.

Even after a halt to this was called and a final, revised application was filed, some one and one-half years ago, the

[4660-4661]

required feasibility showing was still conspicuously absent.

On August 19, 1965 an Order of this Commission was entered which, *inter alia*, commented specifically about the above situation and pointedly required the Applicant to make the long-delayed showing of financing and availability of markets. The order noted:

" . . . However, the application is *still* deficient as to information regarding the financing of the project, and as to information on availability of markets for electric power, *and the Applicant has been requested to remedy these deficiencies.*" (Order, p. 2, emphasis added)

The Order then continued:

"2. The applicant's filing shall include a full and complete statement of a definite plan for the financing of the project, and a full and complete

[4661]

statement of definite plans for the marketing of the electric power to be produced by the project. Failure to comply with this directive will constitute a basis for a motion to dismiss the application for a license for lack of completeness."

This language could not be clearer or more direct as to what was then and there being mandatorily required of Applicant and the consequences of the failure to comply therewith.

Applicant thereafter filed its direct case, and Applicant again failed to show its plan of financing or its plan for marketing power. All that was shown was a letter of an investment banking house conjecturing upon the means of financing, and letter of intent, no agreement, of one party's interest in a small part of the power to be produced. Counsel for Applicant, who is also President of Applicant, conceded at the pretrial hearing that Applicant did not have the required plan of financing:

"PRESIDING EXAMINER: Do you have any indication as to how much of this project can be financed by bonds, and how much by other means, if other means are necessary what means are available?

"MR. BRANNAN: Other than the letter which is now on file from Kohn-Loeb and Company, which does not, Mr. Examiner, spell out the precise amounts which will be raised by the particular issues, we do not at this moment have a complete presentation on that point." (Transcript, page 18.)

As to market, Applicant, at the same hearing, speaking through its counsel and President, conceded that it had no

[4662]

contracts for the marketing of the power:

"PRESIDING EXAMINER: Well, are you asking me for an order conditioned upon your obtaining a contract for the sale of the power?

"MR. BRANNAN: Mr. Examiner, I think if there is not before you at the time you make your findings, a firm—a contract for the firm purchase of the power—then your approval would have to be conditioned upon the consummation of that agreement." (Transcript, page 19.)

"I must say to you as of this prehearing, it is not in the record. I would say to you that if it is humanly possible it will be in the record by the time the record is—by the time the hearings are conducted in May.

"I must equally frankly say to you that I don't think anyone, or certainly we cannot say how this project would be financed until we have consummated a contract with a responsible power user." (Transcript, page 20.)

So, even at this date, the Commission was still in the same position of seeking the information that was to be given for the last five and one-half years. A pig in a poke was still the deal that was offered.

[4662-4663]

(Applicant went through some motions to make a showing in this regard by new materials submitted after the deadline for the filing of its direct case. Applicant was ordered to resubmit a portion of its direct case in question-and-answer form since the narrative material earlier submitted was in violation of the Commission August 19, 1965 Order,

[4663]

and took the occasion to submit two new exhibits not theretofore a part of its direct case. These exhibits purport to be further agreements concerning market and financing. On close examination it is clear that the new exhibits are changes in form only, with no real additional substance.)

What all this means is that applicant, during the years of time available to it, simply has not been able to find anyone interested in agreeing to a firm purchase contract for any significant portion of the electric power to be purchased. No showing of need has been made and no showing of desire by any party to agree to take the power which would have to be put on the market.

This is not the first time the Commission has faced this kind of a situation. In *Wilson and National Youth Foundation*, 28 FPC 571, it was noted:

"The National Youth Foundation also excepts to the hearing examiner's finding that Project Nos. 2125 and 2126 are not economically or financially feasible.

"The Federal Power Act and the Regulations issued thereunder require a showing by applicant of economic and financial feasibility. 16 U.S.C. § 802; 18 CFR §§ 4.40, 4.41. Customarily the Commission does not issue hydroelectric licenses to an applicant who has not presented evidence of financial ability to carry out the project, and who does not show that the project is

[4664]

economically feasible. Public Power and Water Corp., 12 FPC 197, 199-200 (1953). Under section 7(c) of the Administrative Procedure Act, applicant had the burden of proof. 5 U.S.C. § 1006(c). Applicant introduced no evidence of economic or financial feasibility for these two projects. In its application for licenses applicant did not supply the data showing economic and financial feasibility, although repeatedly requested to do so."

In *Public Utility District No. 1 of Skamania County*, Opinion No. 440, Project No. 2199, July 30, 1964, 54 PUR 3d 668, the Commission discussed financing and marketing:

"Applicant purposes to raise \$11,909,000 by a bond issue. Underwriters have indicated the \$9 million in bonds could be sold if firm contracts or other solid basis existed to show the power could be sold.

"There are 2,206 customers for power within applicant's district, which has a population of approximately 26,000. The project would produce between 30,600 kw and 35,000 kw by 1970. Only 20 per cent of the power could be used inside applicant's district for some years; the estimate is that all the power to be produced cannot be used within the district before 1992. Approximately 85 per cent of the district is included within the Gifford Pinchot National Park, so that only about 15 per cent of the area of the district will be available for growth which might appreciably increase the consumption of electric power.

"It appears that by far the greater part of the power to be generated by this project would have to be sold outside the district for many years to come. Applicant presents no studies showing probable demand outside the district. In its attempt to show that the project could be financed successfully, it presented three letters:

[4665-4666]

[4665]

one from a neighboring public utility district and two from private companies. Examination of these letters reveals nothing more than a polite reply on the part of the private companies to letters of inquiry which had been sent them. The letter from the Clark County Public Utility District indicates more interest, but is far from providing any reliable expectation of a market. We think this is an insecure foundation upon which to base an \$11 million venture."

Other decisions arriving at similar conclusions are *Public Power and Water Corporation*, 12 FPC 197, *Pacific Gas & Electric Company*, 2 FPC 300, *Gasconde River Power Company*, 1 FPC 424.

The reasons for the Commission's insistence that the Applicant make a definite showing of market need and financial means are sound and understandable. The Commission's first duty is to protect the public by assuring that hydro-electric projects are needed and are financially sound. The natural resources entrusted to the care of the Commission are to be used for the benefit of the public, not the private speculation of promoters. Thus, public need, consistent with sound financing, must be shown to make a proposed project something more than a money-making scheme of its developers.

An equally obvious reason for requiring Applicant to make a definite showing of financing and market is to prevent the Commission from having to put its stamp of approval on that of which no one else has yet seen the merits. If the Commission

[4666]

were to allow itself to be placed in this position, there would be nothing to prevent the acquisition of licenses for mere trading purposes. (As, indeed, there is good indication that this license is to be so acquired. See discussion, pages 24 and 25 of Transcript concerning sale of assets to an "en-

tity in Nebraska." Presumably the license, if issued, would be sold to such entity or would be held for sale to other users of the power.) The only thing that is tied down as far as this application is concerned is the location of the initial generating facilities. Everything else is nebulous and could be moved to wherever the price is right. Speculation? Of course not.

So far as Staff and Intervenors are concerned, there is also good reason to require definite plans and full disclosure. It is not possible to test the feasibility, probe the accuracy or arrive at the truth, when nothing definite is proposed. The blanket assertion that a market exists is meaningless if a prospective purchaser, agreeable to making firm commitment, is not produced. Exhibit on exhibit can be prepared showing that some time in the future there is going to be a need for power somewhere. But that is a long way from showing that any prospective purchaser wants *this* power at *this* time. Similar exhibits can also be prepared showing

[4667]

that all prospective purchasers of power have numerous alternative plans for acquisition of or provision for power to meet their anticipated future needs. The exchange of exhibits of this type is, however, not really very helpful to the Commission. Much more pertinent would be a real indication from a specific purchaser, that *this* power would meet *its* needs. Then there would be something for the staff, Intervenors, and the Commission to grasp.

The same applies to financing. The simple statement "It can be financed" can only be answered with agreement or, "It can't be financed." Everything thereafter is conjecture. A specific plan - amounts, terms, rates, equity percentage, firm commitment - can lead to specific discussion and eventually a degree of certainty. All of which is not possible in this case.

In summary, then, the Applicant has been given every opportunity to make the required showing of market and

[4667-4669]

financing and either cannot or will not come forward with the required information. The Commission was correct in its mandatory order to make such showing in Applicant's direct case, and the time is now at hand for the Applicant to realize that without that showing being made, it cannot receive the license

[4668]

sought. There is no further opportunity for the Applicant to make the showing. It is respectfully submitted that the application should be dismissed.

DONALD D. CAWELTI

Lee, Bryans, Kelly & Stansfield
550 15th Street
Denver, Colorado

Attorneys for Public Service
Company of Colorado

By /s/ Donald D. Cawelti
Donald D. Cawelti

Dated at Denver, Colorado
this 3rd day of June, 1966

[4669]

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing "Motion of Public Service Company of Colorado to Dismiss Application" upon all parties of record in this proceeding in accordance with the requirements of § 1.17 of the Rules of Practice and Procedure.

Dated at Denver, Colorado, this 3rd day of June, 1966.

/s/ Donald D. Cawelti

Donald D. Cawelti

Attorney for

PUBLIC SERVICE COMPANY
OF COLORADO

[4670]

[4670]

[Filed Jun 6 4 57 PM '66 Federal Power Commission]

BEFORE THE
FEDERAL POWER COMMISSION

Rocky Mountain Power Company)
) Project No. 2289
)

JOINDER BY THE COLORADO RIVER WATER
CONSERVATION DISTRICT IN MOTION TO
DISMISS AND IN THE REQUEST FOR A DE-
FERRAL OF INTERVENORS' FILING DATE
PENDING ACTION ON THE MOTION

The Colorado River Water Conservation District, an Intervenor herein, joins in the motion by Public Service Company of Colorado, dated June 3, 1966, that the pending application for license be dismissed and in the request that the Examiner certify the motion to the Commission for disposition.

The District similarly joins in the request by Public Service Company that the existing filing date of June 13 for intervenors be extended to at least June 27 to provide time for action on the motion to dismiss. If the Commission acts favorably on the motion, as the District urges it should, then the duplication and service of material on June 13 will be an unnecessary and fruitless expense. The District notes that under § 1.13(d) of the Rules the Presiding Examiner may act on this request and urges that in the circumstances he do

[4671]

so, to the end that the parties may be advised at the earliest possible moment.

In support of the motion to dismiss, the District herewith incorporates by reference its joinder of April 26, 1966, in

an earlier motion to dismiss still pending. The grounds there stated, which detail the long history of Commission efforts to get the Applicant to perfect its application failing which the application would be dismissed, are still valid. Despite these Commission efforts and despite the repeated new opportunities afforded to Applicant to make the requisite showings on market and financing, the submission of May 23 is still defective.

The Commission has extended Applicant every possible opportunity to come forward and neither the Commission nor the parties should be put upon further. Instead of affirmative showings on financing and marketing we find in the latest submission vague discussions of forming some new tax-exempt entity, which might be able to finance the project, and suggestions that "if and when you could develop firm prices for the power and energy," users would give consideration to purchases. These are not answers to the questions of who will buy the power and who will put up the hundreds of millions of dollars required which the Commission has been asking Applicant since the initial filing in January, 1966.

§ If the Commission's order of August 19, 1965 which stipulated flatly:

"2. The applicant's filing shall include a full and complete statement of a definite plan for the financing of the project, and a full and complete statement of definite plans for the marketing of the electric power to be produced by the project. Failure to comply with this directive will constitute a basis for a motion to dismiss the application for a license for lack of completeness."

[4672-4673]

[4672]

is to have meaning at all, this application should be dismissed.

Respectfully submitted,

Robert L. McCarty, of Counsel
Colorado River Water
Conservation District

McCarty and Wheatley
1200 Walker Building
Washington, D.C. 20005

June 6, 1966

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Joinder by the Colorado River Water Conservation District in Motion to Dismiss and in the Request for a Deferral of Intervenor's Filing Date Pending Action on the Motion, upon all parties of record in this proceeding in accordance with the requirements of § 1.17 of the Rules of Practice and Procedure.

Dated at Washington, D.C., this 6th day of June, 1966.

Robert L. McCarty

[4673]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

PRESIDING EXAMINER'S DIRECTION TO
APPLICANT AND ORDER GRANTING
ENLARGMENT OF TIME

(June 7, 1966)

Public Service Company of Colorado on June 3, 1966,

JA 341

[4673]

served a motion to dismiss the application on the ground that applicant's showing is insufficient as to markets and as to financing. It also requests that the date for filing the direct cases of the Intervenors and of the Staff be extended from June 13, 1966 to June 27, 1966.

Because the Commission on August 19, 1965, described the application as deficient and because a serious question may exist as to whether the deficiencies have since been remedied, it may be appropriate to refer the motion to dismiss to the Commission. In such event no purpose would be served by requiring the Intervenors or the Staff to serve their evidence by June 13th. The extension to June 27th is granted.

It is ordered that the applicant in its answer to the motion to dismiss shall list those portions of its evidence on which it relies to show adequate markets, and shall separately list those portions of its evidence on which it relies to show adequate financing. The two lists shall specify the page numbers of the evidence relied on, and, where practicable, line numbers. Each list shall also show which pieces of evidence thereon were submitted subsequent to August 19, 1965, and the dates of their submission.

It is further ordered that as soon as convenient, and not later than June 27, 1966, applicant shall supply the Presiding Examiner with two copies of all the evidence referred to on each list.

Arthur H. Fribourg
Presiding Examiner

[4674]

[4674]

[Received Jun 8 9 00 AM '66 Federal Power Commission]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

JOINDER OF THE GAME, FISH AND PARKS
COMMISSION OF THE STATE OF COLORADO
IN "MOTION OF PUBLIC SERVICE COMPANY
OF COLORADO TO DISMISS APPLICATION"

COMES NOW The State of Colorado for the use and benefit of the Game, Fish and Parks Commission (Intervenor) and files this Joinder in the "Motion of Public Service Company of Colorado to Dismiss Application", filed by the Attorneys for Public Service Company of Colorado in this docket on or about June 3, 1966. In support of the foregoing this Intervenor submits the following:

The Applicant either cannot or will not make the required showing of a market for power to be produced by the proposed project. There being no such market, there is no need for the project which if commenced would cause an irrevocable loss to the recreation resources which is an invaluable asset to the economy of the State and it would not be in the public interest to permanently destroy this resource.

The Game, Fish and Parks Commission at the May 6, 1966 meeting went on record as opposing the project due to the adverse effect of the project to the fish, wildlife and

[4674, 4683]

other recreation resources. This Intervenor therefore joins with the Motion to Dismiss the Application.

Respectfully submitted,

DONALD H. HENDERSON,
Assistant Attorney General
Game, Fish and Parks
Department
6060 Broadway
Denver, Colorado

[4683]

BEFORE THE
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

RENEWAL OF MOTION TO DISMISS HERETO-
FORE FILED BY UTAH POWER & LIGHT COM-
PANY AND THE WESTERN COLORADO POW-
ER COMPANY, AND JOINDER IN MOTION OF
PUBLIC SERVICE COMPANY OF COLORADO
TO DISMISS APPLICATION, AND REQUEST TO
CERTIFY MOTION TO THE COMMISSION

COMES NOW Utah Power & Light Company and The Western Colorado Power Company, by their attorneys, F. Gerald Irvine and Sidney G. Baucom of Salt Lake City, Utah, and John R. Barry of Denver, Colorado, and respectfully renew their previous Motions as hereinafter set forth:

On April 22, 1966, the above named Companies filed their Motions pursuant to the Rules of Practice before the Federal Power Commission, which Motions were addressed to the Commission itself for disposition, seeking a dismissal of the within numbered Application.

Under date of June 3, 1966, Public Service Company of Colorado filed its Motion to dismiss the above numbered Application.

[4683-4684]

Intervenors now join in the Motion of Public Service Company to dismiss the Application.

[4684]

Intervenors now reassert all the matters and things contained in their Motions dated the 22nd day of April, 1966, and furthermore join in the request of Public Service Company to defer the filing of the Intervenors' direct cases until June 27, 1966, in order that the Commission may have ample time to dispose of these Motions, as joined in by the respective parties.

Although the parties' original Motions were addressed to the Commission, they renew their request that these Motions be considered by the Commission itself for disposition and respectfully request the examiner to certify said Motions to the Commission for disposition if same have not been submitted to the Commission for its consideration at this time.

Respectfully submitted,

F. Gerald Irvine

P. O. Box 899

Salt Lake City, Utah 84110

Sidney G. Baucom

P. O. Box 899

Salt Lake City, Utah 84110

John R. Barry

946 Metropolitan Building

Denver, Colorado 80202

Attorneys for

UTAH POWER & LIGHT COMPANY and THE WESTERN
COLORADO POWER COMPANY

By /s/ Sidney G. Baucom

Sidney G. Baucom

Dated at Salt Lake
City this 8th day
of June, 1966

[4686]

[4686]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

JOINDER OF COLORADO WILDLIFE FEDERATION,
INC. IN "MOTION OF PUBLIC SERVICE COMPANY
OF COLORADO TO DISMISS APPLICATION"

COMES NOW Colorado Wildlife Federation, Inc. (Intervenor) and files this Joinder in the "Motion of Public Service Company of Colorado to Dismiss Application", filed by the Attorneys for the Public Service Company of Colorado in this docket on or about June 3, 1966.

Respectfully submitted,

DONALD H. HENDERSON,
Attorney at Law
1506-1700 Broadway
Denver, Colorado 80202

* * *

[4690]

[Received Jun 15 3 32 PM '66 Federal Power Commission]

BEFORE THE
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

JOINDER IN MOTION TO DISMISS
APPLICATION FOR LICENSE

Commission Staff Counsel joins in the motion of Public Service Company of Colorado to dismiss the application for license by Rocky Mountain Power Company (Applicant) for failure to show that it can market the power and finance its proposed project, and joins in the motion requesting the Presiding Examiner to certify the motion to dismiss to the Commission prior to convening the hearing.

Subsequent to the filing of the original application for license on January 5, 1961 the Commission by letter of February 2, 1961 advised the Applicant that it had not made a showing of the existence of a market and its ability to finance, and requested the submission of additional information. Commission letters of March 17, 1961, March 30, 1962, May 31, 1962, March 20, 1963, July 29, 1963, March 19, 1964 and June 23, 1964 reiterated the request for satisfactory evidence showing a market and financial feasibility.

The Commission's order of August 19, 1965, fixing a hearing states that "the application is still deficient as to information regarding the financing of the project, and as to information on availability of markets for electric power, and the Applicant has been requested to remedy these deficiencies."

Paragraph (B) 2 of this order then directs the Applicant to file as part of its direct case a full and complete state-

[4690-4691]

ment of a definite plan for financing of the project, and a full and complete statement of definite plans for marketing of the electric power to be produced by the project, and further provided that failure to comply with this directive would constitute a basis for a motion to dismiss the application for lack of completeness.

The Applicant filed its direct case on March 1, 1966. The absence of evidence on market and financing in the Applicant's direct case was high-lighted at the April 12, 1966 pre-hearing conference by the Presiding Examiner's questions to counsel for Applicant who is also its president. At page 17 of the transcript, Counsel for the Applicant was requested to address himself to financing and marketing referred to in the Commission's

[4691]

order of August 19, 1965. At page 18 of the transcript the Presiding Examiner inquired of Applicant's counsel as to how much of the financing of the proposed project was to be raised by bonds and how much by other means. Further at page 25 of the transcript the Presiding Examiner asked Applicant's counsel as to Applicant's proposed debt-equity ratio. Counsel for Applicant was unable to supply the information requested by the Presiding Examiner.

The Applicant was given a further opportunity to correct the deficiencies on marketing and finance by the Commission's Order of April 29, 1966, which permitted it to re-submit its direct case. However, it has again failed to submit such information. Consequently, the application should be dismissed for insufficiency of evidence showing the existence of a market and the ability of the Applicant to finance the proposed project.

Respectfully submitted,

Donald A. Sander
Commission Staff Counsel

Washington, D.C.
6-15-66

[4694-4695]

[4694]

[Received Jun 16 9 49 AM '66 Federal Power Commission]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

IN THE MATTER OF)
) *Project No.*
ROCKY MOUNTAIN POWER COMPANY) 2289

JOINDER OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO IN MOTION OF PUBLIC SERVICE COMPANY OF COLORADO TO DISMISS APPLICATION

COMES NOW the Public Utilities Commission of the State of Colorado, by and through its attorneys Duke W. Dunbar, Frank E. Hickey and Robert Lee Kessler, and respectfully join with the Public Service Company of Colorado in its Motion to Dismiss the application pending before the Federal Power Commission in this proceeding.

No useful purpose would be served by the reiteration of the grounds that Public Service Company has brought forth in its Motion to Dismiss. However, this intervenor wishes to emphasize that although it has not participated in a singular amount of activity in regard to the filing of pleadings in this matter, it has come to the clear conclusion that the basic elements required for the granting of an application such as the one presented in this proceeding have not been met by testimony or exhibits on the

[4695]

part of the Applicant. We have waited patiently for the Applicant to show at least prima facie proof of need, customers, financial ability and the like before we have entered overt into the fray. Our quandry must certainly be the quandry of this Honorable Federal Power Commission, that is, how is it possible to submit and resubmit testimony and

[4695, 4732]

exhibits in eight volumes and yet not present material upon which this Honorable Commission could grant the requested application even if there were no protestants.

The testimony and exhibits presented by the Applicant are wholly without substance upon which this Honorable Commission could possibly grant the application and the Public Utilities Commission, intervenor, respectfully files its joinder in the Motion to Dismiss of the Public Service Company of Colorado.

The Public Utilities Commission of the State of Colorado further joins in the request of Public Service Company of Colorado that this Motion be directed and certified to the Commission by disposition.

Respectfully submitted,

DUKE W. DUNBAR
Attorney General
State of Colorado

FRANK E. HICKEY
Deputy Attorney General

[4732]

[Filed Office of the Secretary
Jun 20 4 09 PM '66
Federal Power Commission]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

CERTIFICATION OF MOTIONS
FOR COMMISSION ACTION

TO THE COMMISSION:

The Presiding Examiner respectfully refers to the Commission (1) the motion of Public Service Company of Colo-

rado to dismiss the application, together with the joinders of the other participants in it, and (2) the motion of Humble Oil & Refining Company for enlargement of time.

The reason for referring the motion to dismiss is that the Commission by order dated August 16, 1965, ruled that the application was then insufficient with respect to markets and financing. The staff and the intervenors consider it to be still insufficient and have joined in the motion. As the Commission has once ruled, and as the Examiner, having in mind the positions of the Staff and the intervenors, cannot say that the basis for the ruling no longer exists, it seems reasonable to suppose that the Commission may wish to have the matter presented to it.

The motion of Humble Oil for enlargement to July 13 of the time within which to file its direct case is a result of the Commission's order of April 29 vacating the Examiner's denial of staff counsel's motion to strike parts of applicant's exhibits and allowing applicant to resubmit its direct case. Humble now says it needs until at least July 13 to file new answering evidence, although the hearing is set for July 6. Its time now expires June 27. As the Examiner is unable to tell whether any answering evidence at all will be needed—a question which will be answered by the Commission's disposition of the motion to dismiss—Humble's motion is referred with the other so that it may be appropriately handled.

A list of the evidence on which the applicant relies to show markets and financing is annexed to its answer to the motion to dismiss, pursuant to an order of the Examiner, who has also directed submission to him of two copies of all the evidence on that list so that the Commission will have it all in a single batch of papers. The copies will be forwarded to the Commission upon receipt.

[4733]

The Commission is respectfully reminded that its April 29 order set the hearing for July 6. If the dismissal motion

[4733, 4752]

is to be considered at this time it would seem appropriate to act promptly to change the hearing date as well as to grant Humble more time.

Respectfully submitted this 20th day of June, 1966.

Arthur H. Fribourg
Presiding Examiner

[4752]

June 23, 1966

Arthur H. Fribourg, Esquire
Federal Power Commission
441 G Street, N.W.
Washington, D.C.

*Re: Rocky Mountain Power Company.
Project No. 2289.*

Dear Sir:

Submitted herewith are two copies of the evidence referred to in Applicant's lists attached to its Answer to the Motion of Public Service Company and Others to Dismiss Application, showing (a) adequate markets, and (b) adequate financing.

This material is submitted in response to the Presiding Examiner's direction, dated June 7, 1966.

Very truly yours,

Smith W. Brookhart

cc: Donald A. Sander, Esq.

[4753]

*LIST OF TESTIMONY AND EXHIBITS SHOWING ADE-
QUATE MARKETS*

Testimony, Volume I:

Witness - Brannan

²pp. 9-11, Q & A No. 14

²p. 11, Q & A No. 15

²p. 12, Q & A No. 16

Testimony, Volume III:

Witness - Schaufeberger

²p. 2, Q & A No. 6

¹p. 2-16, Q & A No. 7 through No. 34, inclusive

Exhibits, Volume I:

²Exhibit 100-04, 6 pages - Memorandum of Intentions
by Consumers Public Power District and Rocky Mountain
Power Company, et al., dated May 16, 1966

²Exhibit 100-4a - Letter from Nebraska Electric Genera-
tion and Transmission Cooperative, Inc., dated May 20,
1966

Exhibits, Volume V:

¹Exhibit 100-34, pp. 1-12 - Projects of Loan

¹Submitted March 1, 1966

²Submitted May 23, 1966

[4754]

*LIST OF TESTIMONY AND EXHIBITS SHOWING ADE-
QUATE FINANCING*

Testimony, Volume I:

Witness - Brannan

²pp. 12-13, Q & A No. 17

[4754-4755]

Testimony, Volume III:

Witness - Katzin

²pp. 1-9, Q & A No. 4 through No. 12, inclusive

Exhibits, Volume I:

¹Exhibit 100-06 - Letter from Kuhn, Loeb & Co., dated February 28, 1966, regarding financing

²Exhibit 100-06a - Supplemental letter from Kuhn, Loeb & Co. dated May 18, 1966

²Exhibit 100-04 - Memorandum of Intentions by Consumers Power District and Rocky Mountain Power Co., et al., dated May 16, 1966, pp. 5-6, Section 7 - "Financing"

¹Submitted March 1, 1966

²Submitted May 23, 1966

[4755]

increasing its power producing capacity. Hence, the reengineered, resurveyed, and redesigned project was undertaken and a new proposal developed.

The Federal Power Commission was advised of the revised approach by a supplemental filing on May 4, 1962, and by letter dated May 31, 1962, directed the Applicant to file its new proposal as a formal amendment of its application.

13. Q. Was such an amended application filed and in what respect did it differ from the earlier filings? A. Yes. The amended application was filed on March 22, 1963. The amended application demonstrated that a pumped-storage facility at Sweetwater when supplemented by a downstream plant at Dotsero, operating as a low-load factor peaking plant would have a combined potential power producing capability of 705,000 kw.

[4755-4757]

14. Q. What further action, if any, was taken subsequent to the filing of the amended application on March 22, 1963? A. Applicant continued to study the project and to seek a market for its substantial volume of power. Efforts to make arrangements for marketing the power with Colorado-Ute

[4756]

Electric Cooperative Association and with other potential users outside of the State of Colorado were conducted. The potential capability of the project was reassessed with reference to the known potential markets and indicated deficiencies of users in the State of Nebraska. A press release by the Department of Interior, dated July 8, 1964, and the Annual Report of the Nebraska Power Review Board indicated an urgent demand for additional supplies of power for users in Nebraska.

As all these factors were considered, it also became apparent to Applicant that a base-load thermal plant would be required to adequately fulfill the demand. Therefore, Applicant began the planning and development of a thermal plant to be located near Oak Creek, Colorado, and the planning and development of a transmission line from this thermal and the Sweetwater hydro facilities to points of redistribution in the State of Nebraska.

Further study of the project also indicated the desirability of abandoning the Dotsero plant and of relocating a hydro plant to perform comparable functions at another point. The new location selected has been identified as the Lost Solar facilities and is situated on a tributary of the South

[4757]

Fork of the White River of the same name in Rio Blanco County, Colorado. The abandonment of the Dotsero facility and the proposal to establish the Lost Solar plant, together with plans for interconnecting this later facility and the Sweetwater facility with an additional reservoir at a

[4757-4758]

point called Meadows on the White River resulted in a further revision of the application into the form as it now stands before the Commission.

An incidental result of the replanning is that the waters of the South Fork of the White River will not be taken out of the White River watershed but will remain in that watershed for application to use by the various entities concerned with the development of the oil shale deposits in Western Colorado.

15. Q. What is the proposed market for the project's power? A. The principal market for the power to be generated by the hydro and thermal electric generating facilities will be Nebraska and its neighboring states.

The power is also being offered to users in the States of Kansas and South Dakota. It has also been contemplated that power may be made available east of the Missouri River by and through coordination with the existing facilities in Nebraska.

[4758]

16. Q. Have any consumers within this market evidenced an intention to purchase power from Rocky Mountain Power Co.? A. Yes. As a result of negotiations with Consumers Public Power District, headquartered at Columbus, Nebraska, a Memorandum of Intentions has been entered into by and between Consumers Public Power District and Rocky Mountain Power Co. and its two affiliates hereinabove identified, under date of May 16, 1966, concerning the purchase and delivery of the power to be generated by these facilities; subject to the granting of this application. This Memorandum of Intentions is identified as Exhibit 100-4. In addition, the Applicant is in receipt of a letter dated May 18, 1966, from the Nebraska Electric Generation and Transmission Cooperative, Inc. indicating its intention to negotiate a purchase of the power as soon as firm prices can be developed. This letter is included as Exhibit 100-04A.

17. Q. What arrangements, if any, have been made for

financing the construction of the facilities proposed in Application No. 2289?

[4759]

11. Q. I now hand you Exhibit 100-16, titled "Analysis of Mountain-midwest Power Pool," and ask if this exhibit was prepared by you? A. Yes, it was.

12. Q. Please describe Exhibit 100-16. A. This exhibit is an analysis prepared by me to determine the desirability of pumped storage in the system. This was done for three stages of development by comparing a full steam generation supply to the system in lieu of pumped storage generation plus steam generation as planned.

13. Q. What are the results of this analysis? A. The analysis shows that the development as planned, employing pumped storage will deliver firm power to the purchaser at a cost 12 percent to 22 percent less per stage than for all steam generation. Therefore, pumped storage is highly desirable in this system.

14. Q. I now hand you Exhibit 100-17, entitled "Comparison of Purchased Mountain - Midwest Pool Power Delivered To Nebraska vs. Power Generated at Columbus, Nebraska," and ask if this exhibit was prepared by you?

[4760]

A. Yes, it was.

15. Q. Please describe Exhibit 100-17. A. This exhibit is an analysis (for several stages) prepared by me to determine the desirability of the system as planned compared to an equivalent steam system supplying the Nebraska and Kansas loads but having the steam generation located at Columbus, Nebraska. In order to obtain comparable systems, transmission from Columbus westward across Nebraska was also included in the all-steam system. The same basic design plans of steam plants transmission lines and switching stations were used in both systems.

The rates for the system as planned is \$12.50 per kilowatt per annum delivered, for 5.5% interest and \$10.62/perkw/

[4760-4762]

annum for 4% interest, plus 2.1 mills per kilowatt-hour delivered plus 1.1 mills per kilowatt-hour for transmission to Archer and 1.5 mills per kilowatt-hour beyond Archer. Federal, State and local taxes are included.

The annual cost of the all steam Nebraska system is based upon 5.5 percent cost of money, except for transmission

[4761]

which is 4 percent. (The annual costs are also shown for 4% interest on all features). Payment in lieu of taxes are included, which amount to about 58% of the taxes included in the system as planned. The cost of coal delivered to Columbus, Nebraska, amounting to 28.5 cents per million B. T. U., was used in the all steam system.

16. Q. What are the results of this analysis based upon 60 percent annual load factor? A. The analysis shows that the cost of firm power delivered by the system as planned for 60 percent annual load factor, would be 10 percent to 21 percent (depending upon the stage of development) less than for a system having all steam power production located at Columbus. The above percentages are based upon all steam system money costing 5.5 percent except for transmission which is 4%. Similar percentages, based upon money for the all steam system costing 4.0 percent for all features are 10 percent to 20 percent.

17. Q. What are the principal reasons for the lower cost of power delivered from the system as planned?

[4762]

A. The primary reasons are that,

- (1) The cost of fuel is about twice as much at Columbus compared to Oak Creek.
- (2) The system as planned has the advantage of pumped-storage plants.

18. Q. Have you reviewed the various cost estimates of the various stages of development? A. Yes, I have.

19. Q. In your opinion are these costs realistic? A. Yes.

[4762-4764]

The cost estimates for this development are unique in that about 90 percent of the direct costs are backed up by firm contracts.

20. Q. Have you examined the construction specifications and contract documents for this development? A. Yes, I have.

21. Q. What is your opinion of these documents? A. In my opinion these specifications and contract documents are fair, realistic and practical.

[4763]

chronological summary of my experience.

5. Q. What is your present position? A. I am Operations Director of Consumers Public Power District.

6. Q. What action has been taken by Consumers Public Power District in dealing with Rocky Mountain Power Co. under Project 2289? A. On May 16, 1966, a "Memorandum of Intentions" was executed by Consumers Public Power District and by Rocky Mountain Power Co. and its affiliated transmission system and thermal plant corporations under which Consumers declares its intention to purchase and take delivery in 1970 of electric power in an amount not less than 100 megawatts and not more than 150 megawatts, with the right of first refusal to purchase and take delivery of additional power in the event the facilities proposed by Project 2289 produce more than 150 megawatts.

7. Q. Why would such an arrangement be attractive to Consumers Public Power District? A. Because through the combined operation of the projects, with the pumped-storage project operating so as to permit the thermal plant to run at base load, it could be expected to result in low rates for power and energy which Consumers Public Power District is seeking.

[4764]

8. Q. To secure low cost power and energy it is usually a prerequisite that the power plants and transmission sys-

[4764-4765]

tem deal with large blocks of power; and will this apply to your organization in Nebraska? A. Yes, it will.

9. Q. Please give us the benefit of the load projections for which your organization considers it necessary to plan.

A. Table I of Exhibit 100-34 shows the projections of the load demand which the system of Consumers Public Power District will have to meet.

10. Q. How have these projections been arrived at? A. A careful analysis was first made of the trends of load growth by months, using the past ten years of record as the basis; this gives the future load growth pattern, and that in turn has been applied to determine the maximum peak loads to be met each year.

11. Q. Have you used the same annual growth rates?

A. No. For the years immediately ahead, a rate of 8.6 percent per annum has been used for the month of July - the month of the greatest demand - and to be conservative,

[4765]

the rate has been reduced gradually for the other years as follows:

Up to 1972 inclusive 8.6 percent; 1973 and 1974, 8.0 percent; 1975 and 1976 7.5 percent; 1977 and 1978 7.0 percent; and 1979 and thereafter 6.5 percent.

12. Q. Do you consider these growth rates realistic? A. They are probably over-conservative since the ten year past history shows no trend of diminishing growth rate as used.

13. Q. Why do you think so? A. Because it is necessary to consider the growth rates in relation to the activities of the community, the growth of the population, the growth of local industries, the average income of a family, and of course the future projections in respect of each of these factors, none of which show immediate signs of lower rates of growth.

14. Q. Do you consider it possible for these load growth rates to be exceeded? A. Yes, if the present momentum of the growth of the Nation's economy is maintained, the loads will be greater.

[4766]

15. Q. Have you assessed them? A. Yes, and Table II of Exhibit 100-34 shows the estimated load demands for average and probable maximum rates of growth of load, and the corresponding deficiencies which will have to be met either by purchasing the requirements from the Mountain Midwest Power Pool, of which Rocky Mountain Power Company is an essential component, or be met from other sources or facilities of Consumers Public Power District.

16. Q. Having studied your own system, have you knowledge of the projected load growths and corresponding deficiencies of the other utility groups in Nebraska? A. Yes.

17. Q. What do you consider will be the deficiencies of these other utility groups in Nebraska? A. Exhibit 100-34 shows these projections, and in particular:

Table III - deals with the projections made by Nebraska Public Power System

Table IV - shows the summation of the Consumers Public Power District's conservative projections and the Nebraska Public

[4767]

Power System's projections.

Table V - shows the projections for the Municipalities in Nebraska

Table VI - shows the projections for Omaha Public Power District

Table VII - is a summation of the projections for Consumers Public Power District, Nebraska Public Power System, the Municipalities and Omaha Public Power District.

18. Q. As a utility with interconnections, or interconnections through other organizations, in the north to South Dakota, in the west to Wyoming, and in the south to Kansas, do you consider there exist appreciable deficiencies

[4767-4769]

which could be met by the power produced by the mountain midwest power pool? A. Yes, certainly there are.

19. Q. Have you sufficiently close association with these utilities in the north and south to make such a statement?

A. Yes I have, because of the interconnections with Black

[4768]

Hills Power and Light Company in the north and the Tri-State Co-operative in the West, and planned interconnections with certain Co-operatives in the south, and having been associated with the negotiations and discussions of these utilities to meet their known deficiencies of power resources in the coming years, I can testify that the deficiencies are real.

20. Q. Have you any knowledge of these projections and deficiencies and if so, what are they? A. Reference should be made to Exhibit 100-34 and more particularly to the following tables:

Table VIII - Projected Load Demands and Deficiencies of Black Hills Power and Light Company.

Table IX - Projected Load Demands and Deficiencies of four Co-operatives in Central and Western Kansas, and Certain Municipalities in the Same Area.

21. Q. In view of your knowledge of the loads and utilities resources of the area, what would you estimate are the minimum deficiencies to be met up to 1985? A. These are set out in detail in Exhibit 100-34:-

[4769]

Table X - Minimum projected loads and deficiencies to be met by the Utilities of Nebraska with the addition of Black Hills Power and Light Company and the four Co-operatives in Kansas.

22. Q. To the best of your knowledge, are there any other interchange and co-ordination agreements which are

[4769-4770]

likely to reduce these deficiencies? A. Yes, there are long term contracts with the Bureau of Reclamation, with the Tri-State G. and T., and with Basin Electric, which has a thermal plant near Stanton, North Dakota, and these have been taken into consideration in the projection deficiencies. There are also agreements or understandings with Omaha Public Power District and Midcontinent Area Power Planners, and it is possible that some of the deficiencies could be supplied by other utilities associated with Midcontinent Area Power Planners if their rates for power and energy deliveries are competitive, bearing in mind such power and energy will normally be available on a short term basis only.

23. Q. Having regard to the foregoing and your knowledge that power agreements cannot be consummated immediately,

[4770]

what would you consider would be the probable need which the Power Pool and its associates will meet? A. I do not wish to speak for other Nebraska Utilities, but I have knowledge of the minimum requirements of Consumers Public Power District and can assess the situation of the Kansas Co-operatives, and would refer you to Exhibit 100-34.

Table XI - Minimum Requirements Which Could be Supplied by the Power Pool

24. Q. Having regard to your knowledge of the power industry in Nebraska, and without intending to speak on behalf of other Nebraska utilities, what would you consider would be the probable load demands which the Power Pool will have to meet? A. It is difficult for me to assess the position of Omaha Public Power District, who have normally not gone outside their area for sources of power other than short term, but having regard to the cost of the power and energy from the Power Pool, it would be realistic to include Nebraska Public Power System in the probable load and would refer you to Exhibit 100-34, Table XII.

25. Q. Tables XI and XII indicate a small load in 1970; how do

[4771-4772]

[4771]

you consider such a small load can justify the capital investment on a 500 kilovolt transmission line? A. The transmission system has been designed to allow development in stages, so as to conserve capital investment. The loads of 1970 can be met and supplied with the power being delivered on the 230 kilovolt busbars at Archer, near Cheyenne. This is possible because jointly with Tri-State Generation and Transmission Co-operative, Consumers Public Power District is building a 230 kilovolt line from Stegall to Sidney and on to North Platte. Arrangements would have to be made with the U.S.B.R. to wheel over their 230 kilovolt system from Archer to Stegall.

26. Q. How do you envisage the delivery of power will develop in the early years? A. The next stage would be extension of the transmission line from Archer to North Platte, designed for 500 kilovolts but operated on 345 kilovolts. This line would be extended to the Columbus or Lincoln area, and the raising of the voltage will follow after the circuits have been duplicated. This program compliments Consumers long range planning.

[4772]

27. Q. Having regard to the interconnection and agreements with the utilities of adjoining States, how do you think the interconnection with Power Pool will develop? A. The Nebraska Utilities are virtually at the crossroads, with interconnections north and south to take care of the seasonal diversity in load demand and the interconnections east and west to the time zone diversity. Therefore to secure the best advantage from these diversities it follows that some of the deficiencies will have to be supplied from the north and the east to justify the capital investment in the interconnections.

28. Q. Will the interconnection with the Power Pool provide any other benefits for the Nebraska Utilities? A. In addition to the low cost power and energy for many years to come, the utilities of Nebraska will be in a position

[4772-4774]

to use the pumped storage facilities to the Rocky Mountain Power Company.

29. Q. How can that happen, with these pumped storage sites some 600 miles from Columbus, Lincoln and Omaha? A. By virtue of the interconnected system, the power and energy produced from any new generation installed in the

[4773]

eastern part of Nebraska during periods of light load would displace the power and energy produced at Oak Creek thus permitting power to be used for pumping water, at times of low load, into storage at Sweetwater; this water would then be released later for meeting the peak loads, including Eastern Nebraska.

30. Q. Of what advantage would that be to the Nebraska Utilities? A. It will permit the installation of really large thermal or nuclear generating units, and because of this interconnection with the Rocky Mountain Power Company's pumped storage facilities, these large units will be operated at or near their continuous designed ratings for long periods of time.

31. Q. What operational advantage do you obtain? A. Really, there are four advantages or benefits, all well known:

1. Fuel economy through long operations at or near design rating.
2. Better use of capital through the generation of more kilowatthours for the capital investment.

[4774]

3. Lower maintenance costs through avoiding frequent changes in the thermal differentials of expansion of turbines and boilers.
4. Early retirement of small units which are costly both as regards fuel and operating personnel.

Without the Sweetwater pumped storage project designed to operate on a seven-day cycle which includes the difficult

[4774-4775]

low load days of Saturday and Sunday, a considerable amount of overage small capacity plant would have to be retained with the attendant high fuel and operating costs.

32. Q. Are there other advantages to be obtained from this interconnection? A. Yes, probably the most important one to utilities is having generating capacity available of an appreciable amount which can generate both real and reactive power and have this power available for the system in a matter of seconds. There is nothing available to the utility industry at present which can deliver these benefits so quickly.

33. Q. It appears that you envisage thermal generating plant being installed in the east; is that so, and perhaps you will

[4775]

give us your reasoning? A. The basic cost of coal delivered at the Oak Creek thermal plant which is 14.5 cents per million British thermal units. The present corresponding price of coal delivered alongside the site in Nebraska by barges or rail is approximately 27.7 cents, and about 28.5 cents if the cost of handling the coal is included. Therefore the fuel element in the cost of energy per kilowatthour is double in Nebraska as compared with a minemouth site in the Rockies. This difference must be weighed against transmission costs. The interconnection with mountain midwest power pool will produce, apart from the long term low cost power and energy, the following additional advantages:

1. Once the interconnector is loaded it may become justifiable to install large high heat economy units in Nebraska which running on the base of the load will compensate partially for the higher fuel cost.
2. Scheduled and emergency generating standby provided at a lower cost, at Sweetwater, than any other means at present available.
3. Having the large generating units running on the system in the east will raise the stability limit of the inter-

[4776-4778]

[4776]

connector and hence increase the loading capability of the system as a whole without an increase in capital investment.

34. Q. To the best of your knowledge are there any other loads which could be supplied apart from those in the adjoining eastern States? A. Yes, I consider there are two possibilities:

- (a) Power and energy to be supplied into the Bureau of Reclamation Substation at Hayden to replace that supplied by the Bureau of Reclamation from Glen Canyon to the Salt River Project in Phoenix; this amounts to 250 megawatts and is required by about 1971 or 1972 and if not supplied by Mountain Midwest Power Pool, I understand will necessitate a thermal plant of that capacity in the Colorado coal fields, probably at Hayden.
- (b) Peaking capacity for existing Hayden plant. The pumped storage facilities of Sweetwater could make a twofold contribution to the economy and capability of the Hayden plant, namely:
 - (i) Increase the firm capability by providing the peak power and energy generated from water stored

[4777]

by the Hayden energy supplied during periods of low load.

- (ii) Reduce the cost of the energy generated because the output in kilowatthours and in kilowatts of demand will be increased substantially.

[4778]

A. The powers and duties of the Nebraska Power Review Board are contained in Section 70-1001 to 70-1020, Revised Statute of Nebraska Supplement 1963. These sections are

[4778-4780]

reproduced on pages 17 through 25 of the attached Exhibit 100-32 entitled *Second Annual Report - The Nebraska Power Review Board to the Governor of Nebraska 1964 - 1965*.

5. Q. Would you please state whether or not it is part of the duties of the Power Review Board to familiarize itself with the present and future power requirements of all type of electric consumers in the State of Nebraska and to correlate its requirements to available supply? A. Yes. A study and survey of this nature has recently been prepared by our staff under my direction and a summary will be found on pages 35 and 36 of Exhibit 100-32.

6. Q. Are you familiar with the proposal that has been tendered by the Rocky Mountain Power Co. to supply thermal and hydroelectric power to users in Nebraska? A. Yes. I have participated in several meetings between representatives of the various public power districts of Nebraska and the staff of Rocky Mountain Power Co. I have also been supplied with a copy of the "Memorandum of

[4779]

Intentions" dated May 16, 1966, executed by Rocky Mountain Power Co. and its affiliates on the one part and Consumers Public Power District on the other part (Exhibit 100-04). It is apparent to us from the information received that Rocky Mountain Power Co. and its affiliate corporations constitute a potentially feasible and economic source from which the power requirements of users in Nebraska can be supplied.

[4780]

Exhibit 100-04 (6 sheets)
Project No. 2289
Rocky Mountain Power Co.
Witness: Brannan

MEMORANDUM OF INTENTIONS

It is the purpose of this Memorandum to state the intentions of the parties pertinent facts with respect to the gen-

eration of electric energy by hydro and thermal installations to be built on designated sites in western Colorado and the transmission of such electric energy to points in Nebraska for distribution to users throughout Nebraska and adjoining states. This proposed generation and transmission complex is now known and identified as the "Mountain-Midwest Power Pool" and will sometimes hereinafter be referred to by that name or as the "POOL".

PARTIES AND PROPOSED FACILITIES

1. Consumers Public Power District, hereinafter sometimes referred to as "CONSUMERS", is a public corporation and political subdivision created by and existing under the laws of the State of Nebraska and is presently engaged in the generation and purchase of electric power and energy and the transmission, distribution and sale of such power and energy to users in the State of Nebraska.

CONSUMERS is now operating electric generation and distribution facilities serving at wholesale or retail more than 350 municipalities, industrial, urban and rural residential and other type users in 71 counties of Nebraska. The power requirements of these users is increasing at a greater rate than existing available generation resources will be able to supply. It is thus anticipated that by 1970 there will be a deficiency of approximately 150 megawatts of power with which to meet the increased demand of CONSUMERS' customers; and, in the area now served by CONSUMERS, there will be an additional deficiency of approximately 200 megawatts of power. The volume of the demand of such users and in such area is projected to continue to increase annually thereafter at an approximate rate of 7% to 10% per annum of the total loan demand. Therefore, CONSUMERS is presently seeking a new source of supply of electrical power and energy to meet the anticipated increasing demand.

2. The three corporate entities comprising the Mountain-Midwest Power Pool are more particularly described as follows:

[4780-4781]

(a) Rocky Mountain Power Co., a Colorado corporation, possesses decreed water rights on tributaries on the Colorado River located in Western Colorado, together with excellent pumped storage hydro-electric power sites for the beneficial application of said waters to the production of electric energy.

[4781]

Rocky Mountain Power Co. proposes to construct the Sweetwater hydroelectric plant at Sweetwater Lake on Sweetwater Creek (a direct tributary of the Colorado River) in Garfield County, Colorado, consisting of pumped-storage and conventional hydroelectric generating facilities. In its first stage, the Sweetwater hydroelectric project will have a rated capacity of 165 megawatts at minimum head and a peaking capability of 200 megawatts. In its second stage, it will have a rated capacity of 330 megawatts at minimum head and a peaking capability of 400 megawatts. Development and expansion of additional generating capacity will be based on the storage reservoir to be built at Meadows on the South Fork of the White River which will be connected by a pipe line and tunnel with Sweetwater forebay. Provision is also made for future expansion of the hydroelectric capability of the project, also based on Meadows Reservoir, by construction of a pumped-storage plant on the South Fork of the White River near its confluence with Lost Solar Creek.

Feasibility and engineering studies of this project have been prepared and filed with the Federal Power Commission, copies of which have been made available to CONSUMERS.

(b) Oak Creek Power Company, a Delaware Corporation, possesses rights in a valuable thermal power producing site near the town of Oak Creek in Routt County, Colorado, and proposes to construct a baseload coal fired thermal plant at said site with an initial installation of

[4781-4782]

two units, each having a normal and continuous rating of 300 megawatts.

This Company now holds a firm contract to receive 38,000,000 tons at \$0.145 per million B.T.U., from reserves of coal in immediate proximity of said site. The Company has also established lawful claims upon ample supplies of water pursuant to applicable Colorado law. The reserves of coal and supplies of water will permit this facility to expand its capability to 1800-2000 megawatts.

Feasibility and engineering studies of this project have been prepared and filed with the Federal Power Commission, copies of which have been made available to CONSUMERS.

(c) East-West Intertie, Inc., a Delaware corporation, possesses the engineering competence and experience to design, plan and to construct transmission lines interconnecting the Sweetwater hydroelectric plant

[4782]

with the Oak Creek thermal plant and each of these to a point or points in Nebraska and adjoining states. This firm has designed and planned a 230 kilovolt line to connect these generating facilities with the Bureau of Reclamation's substation at Hayden, Colorado. East-West Intertie, Inc. has also performed the necessary engineering studies and planned the lines by which a 500 kilovolt transmission line will connect the Oak Creek station with the Bureau of Reclamation's substation at Archer, Wyoming, and the Archer station with Columbus, Nebraska, or other point designated by CONSUMERS with substations at North Platte and such other points as CONSUMERS designate.

Feasibility and engineering studies of this project have been prepared and filed with the Federal Power Commission, copies of which have been supplied to CONSUMERS.

[4782-4783]

It is proposed that these facilities, when constructed, be operationally integrated under the identification of Mountain-Midwest Power Pool pursuant to an Agreement acceptable to CONSUMERS.

3. It is the belief of the parties that as and when the power and energy producing facilities of the POOL are operational, such facilities will constitute a source from which the power and energy requirements of CONSUMERS and other users groups with which CONSUMERS now maintains operating relationships may be feasibly and economically satisfied at competitive rates both for the immediate future as well as for the longer term.

Therefore, and subject to the terms, conditions and provisions herein outlined, in order to make possible the initiation by the POOL entities of construction and such steps as are necessary to the generation of both hydroelectric and thermal power by 1970,

CONSUMERS declares its intention to purchase and take delivery in 1970 of electric power in an amount of not less than 100 MW and not more than 150 MW.

The POOL agrees, subject to the terms conditions and provisions herein outlined, that in the event of the POOL installs facilities beyond those necessary to produce more than 150 MW, CONSUMERS shall have the right of first refusal to purchase and take delivery of said additional electric power. Said right of first refusal shall be exercise within six months after the date notice of intention to increase capacity of its facilities shall have been given by POOL to CONSUMERS.

[4783]

PRICE

4. The POOL agrees to make electric power and energy available to CONSUMERS at the Oak Creek thermal plant switchyard at 230,000 volts at the following rates:

(a) \$12.50 per kilowatt per annum for contracted power

demand. The foregoing demand charge is based on the ability of the POOL to obtain construction funds for generation at an interest rate of 5½%. In the event the interest rate is decreased or increased, the foregoing rates will be adjusted accordingly.

(b) 2.1 mills per kilowatt hour for energy. This energy rate is based on a delivered cost of fuel for the thermal plant of \$0.145 per million B.T.U. In the event the cost of fuel is decreased or increased, the foregoing rates will be adjusted accordingly.

The POOL agrees to deliver electric power and energy to CONSUMERS at points other than the Oak Creek thermal plant switchyard at the following rates which shall be added to the base energy charge in Paragraph (b) above. Delivery of power and energy to CONSUMERS shall be at the POOL's 230,000 volt facilities at the respective delivery points. The additional transmission charges are based on procuring the construction funds for transmission and substations at an interest rate of 4%. In the event the interest rate is decreased or increased, the following charges will be adjusted accordingly.

(a) For delivery at Hayden, Colorado; add 0.3 mill per kilowatt hour

(b) For delivery at Archer, Wyoming; add 1.1 mill per kilowatt hour

(c) For delivery at North Platte, Nebraska; add 1.5 mill per kilowatt hour

(d) For delivery at Columbus, Nebraska; add 1.5 mill per kilowatt hour.

OPERATION OF FACILITY

5. The POOL recognizes CONSUMERS' obligation to deliver the power and energy to be made available pursuant to this memorandum to its contract purchasers in as efficient and dependable manner as possible and that CONSUMERS must have the right to effectively participate in the

[4783-4784]

direction and control of the above described production and transmission facilities. Hence, it is agreed that upon written request by CONSUMERS, the parties will take steps promptly to pass operating control of the POOL facilities to CONSUMERS so as

[4784]

to best accommodate the requirements of Nebraska users, consistent with the economic interest of the POOL.

OPTION

6. The POOL hereby grants to CONSUMERS, for and on behalf of itself and the other users of power and energy to be made available by the facilities herein described, an option to acquire full title to said generation and transmission facilities (reserving only to Rocky Mountain Power Co. the rights to the beneficial use of all water for other than power producing purposes after said waters have served their full power producing purposes) subject to such bond or mortgage indebtedness as may exist at the time of the exercise of said option at a price equivalent to the investment cost to the POOL at the date said option is exercised plus accrued simple interest at the rate of 4% per annum. Said option may be exercised by CONSUMERS at any time after a date which is 10 years after the date of the first delivery of power pursuant to this memorandum.

Investment cost as used in this Section 6, shall consist of the accumulated funds actually expended by each of said entities as of the date of the first delivery of power less any repayment of principal and interest which shall have been made on the loans secured by a lien upon said facilities. In any event, each of the above described facilities (except water rights) shall pass into the complete ownership and control of CONSUMERS as Trustee for the users thereof upon payment of the final installment of the mortgage or bonded indebtedness against said facility. This Option right may be assigned to a Nebraska non-profit corporation or similar entity by mutual agreement of the parties.

FINANCING

7. The parties understand that the POOL must borrow the funds necessary to build the above described facilities and that said facilities will be subject to a lien for the repayment of said borrowings. The parties further understand that the income to be derived by the POOL from CONSUMERS pursuant to the sale and purchase of power as hereinabove contemplated will also be assigned as additional security for the repayment of said loans and CONSUMERS agrees that, subject to applicable law, it will cooperate with the POOL in securing the necessary construction funds.

[4785]

8. The parties hereto agree that they will promptly initiate a joint and cooperative effort to secure letters of intent and contracts for the sale of the power and energy herein contemplated to be generated and transmitted to other users within the State of Nebraska and neighboring states.

9. It shall be the responsibility of the POOL to obtain such rights to the use of the transmission facilities of other entities not parties to this agreement as may be required for transmission and delivery to CONSUMERS of the power contemplated.

10. The parties are aware that certain litigation to test the constitutionality of Legislative Bill No. 764 heretofore enacted by the Nebraska Legislature is now pending before the Supreme Court of the State of Nebraska; and that should the constitutionality of said enactment be affirmed, CONSUMERS' major responsibilities with respect to matters which are the subject matter of this Memorandum will be transferred to a Nebraska Grid System envisioned by said L.B. No. 764. Therefore, the POOL hereby consents to and agrees to cooperate in transferring to the Nebraska Grid System the rights herein granted to CONSUMERS.

11. Prior to incurring any legal obligations to each other, the parties shall obtain all necessary regulatory approvals

[4785]

and negotiate definite contracts between them and with any other necessary parties, provided further that if the necessary implementing loans have not been obtained and definitive work has not been initiated on the principal facilities comprising the Mountain-Midwest Power Pool within one year from the date hereof, CONSUMERS reserves the right to nullify this memorandum for any and all purposes without obligation to the POOL.

WITNESS our corporate signatures by a duly authorized officer this 16th day of May, 1966.

CONSUMERS PUBLIC POWER
DISTRICT

By /s/ D. W. Hill
General Manager

ROCKY MOUNTAIN POWER CO.,
for itself and as a member of
Mountain-Midwest Power Pool

By /s/ Charles F. Brannan
President

OAK CREEK POWER COMPANY,
for itself and as a member of
Mountain-Midwest Power Pool

By /s/ Charles F. Brannan
President

EAST-WEST INTERTIE, INC.,
for itself and as a member of
Mountain-Midwest Power Pool

By /s/ Charles F. Brannan
President

[4786]

[4786]

Exhibit 100-04a
Consisting of 1 sheet
Project No. 2289
Rocky Mountain Power Co.
Witness: BRANNAN

Nebraska Electric
Generation and Transmission Cooperative, Inc.
7 Pershing Center Mail to P.O.
Box 456
COLUMBUS, NEBRASKA 68601

Phone 564-8142

May 20, 1966

Mr. Charles Brannan, President
Rocky Mountain Power Company
275 University Blvd.
Denver 6, Colorado

Dear Mr. Brannan:

This letter is sent in reply to your visit to Columbus of May 16, 1966 in regard to a memorandum of intention to purchase power and energy from the Rocky Mountain Power Company.

We have maintained an interest in this resource development by the Rocky Mountain Power Company and thus have followed closely the developments you have made. If and when you could develop firm prices for the power and energy we would give consideration to firm purchases. Also because of this interest we could give favorable indication of our interest to negotiate for purchase of this power and energy.

To give you some idea as to the magnitude of load which we shall have as deficiencies in summer of 1971, we have estimated this to be 65,000 kilowatts. This results from an estimated total load of 315,000 kilowatts of which 250,000

[4786]

kilowatts is now or will shortly be obligated to other long term obligations.

Very truly yours,

D. A. Blatchford
General Manager

DAB:ls

Exhibit 100-16
 Consisting of 6 pages
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: COTTON

ANALYSIS OF
MOUNTAIN - MIDWEST POWER POOL
SYSTEM, AS PLANNED

A. Pumped Storage Plants Plus Steam Generation

Total Available Megawatts, Peaking

Description	<u>Stage I B</u> peak	<u>Stage II BB</u> peak	<u>Stage III BB</u> peak
Steam	600	900	1,500
Pumped hydro	300	400	800
TOTAL available mw. peaking	900	1300	2,300

Capital Cost (x \$1,000)

	<u>Stage I B</u> Cost & \$/peak kw.	<u>Stage II BB</u> Cost & \$/peak kw.	<u>Stage III BB</u> Cost & \$/peak kw.
Steam & substa.	\$ 85,647=143.0	\$124,987=138.9	\$205,932=137.2
Pumped hydro & substation	41,704=139.2	44,904=112.2	101,526=127.0
Subtotal	127,351	169,891	307,458
Trans. & switching stations	60,600	115,612	180,425
TOTAL	\$187,951	\$285,503	\$487,883

Analysis of Mountain - Midwest Power Pool
System, as Planned (continued)

Annual Energy (x 1,000 kw. -hr)

Description	Stage I B		Stage II BB		Stage III BB	
	1,000 kw. -hr	Av. mw.	1,000 kw. -hr	Av. mw.	1,000 kw. -hr	Av. mw.
Gross annual energy	4,629,900	=529	6,285,900	=717	11,817,400	=1350
Less:						
Line loss						
Station use						
& losses	-603,900		-819,900		-1,541,400	
Pumping energy						
Net delivered	4,026,000	=459	5,466,000	=623	10,276,000	=1175

Peak Demand, Annual Load and Plant Factors

Description	Stage I B	Stage II BB	Stage III BB
Pool peak demand (mw)	766 mw.	1040 mw.	1955 mw.
Pool annual load factor	60%	60%	60%
Generation an. plant factor	69.0%	69.0%	69.0%

[4788]

Analysis of Mountain - Midwest Power Pool
System, as Planned (continued)

Annual Cost (x \$1,000)

Description	Stage I B	Stage II BB	Stage III BB
Steam (5 1/2% int. inc.)	\$15,362	\$21,390	\$37,395
Pumped storage (5 1/2% int. inc.)	3,667	4,079	8,763
Subtotal	19,029	25,469	46,158
Transmission (4% int. inc.)	3,997	7,586	11,956
Total for power	23,026	33,055	58,114
Credit for water sales	- 192	- 186	-1,654
Credit for flood control	not incl.	not incl.	not incl.
Net annual cost	\$22,834	\$32,869	\$56,460

Cost Per kw-hr. (delivered), as planned.

	Stage I B	Stage II BB	Stage III BB
Cost per kw. -hr	5.67	6.01	5.49

ANALYSIS OF
MOUNTAIN - MIDWEST POWER POOL
SYSTEM, AS PLANNED

B. All Steam Generation

Total Available Megawatts

Description	Stage I B	Stage II BB	Stage III BB
Peaking mw.	900	1,300	2,300
Spare Unit	300	300	300
TOTAL	1,200	1,600	2,600

Capital Cost (x \$1,000)

Description	Stage I B	Stage II BB	Stage III BB
Steam & substa.	\$171,294	\$222,000	\$357,000
Transmission	60,600	115,612	180,425
Adj. Sweetwater plants	- 4,200	- 4,200	- 6,500
Net transmission	56,400	111,412	173,925
TOTAL	\$227,694	\$333,412	\$530,925

[4790]

JA 382

Analysis of Mountain - Midwest Power Pool
System, As Planned (continued)

Annual Energy (x 1,000 kw. -hr)

Description	Stage I B		Stage II BB		Stage III BB	
	1,000 kw. -hr	Av. mw.	1,000 kw. -hr.	Av. mw.	1,000 kw. -hr	Av. mw.
Gross	4,428,600	=505	6,012,600	=684	11,303,600	=1,292
Line losses						
Station use & loss	- 402,600		- 546,600		-1,027,600	
Net delivered	4,026,000	=459	5,466,000	=623	10,276,000	=1175

Peak Demand, Annual Load and Plant Factors

Description	Stage I B	Stage II BB	Stage III BB
Pool annual peak demand (mw)	766	1040	1955
Pool annual load factor	60.0%	60.0%	60.0%
Generation an. plant factor	65.8%	65.8%	65.8%

Analysis of Mountain - Midwest Power Pool
System, All Steam Generation (continued)

Annual Cost (x \$1,000)

Description	Stage I B	Stage II BB	Stage III BB
Trans., adj. (4% int. inc.)	\$ 3,720	\$ 7,310	\$11,525
Steam:			
Fixed (8.42%) (5.5% int. inc.)	14,420	18,680	30,000
Int. on fuel stocks	19	25	41
No load fuel	364	1,150	1,875
O & M (fixed)	1,365	1,600	1,900
Gen. & Admin.	341	400	475
Energy fuel	5,670	7,720	14,520
O & M (variable)	735	800	950
O & M (adj.)	221	240	285
Subtotal (steam)	23,635	30,615	50,046
Adj. for hydro reactive	537	980	1,635
TOTAL	\$27,892	\$38,905	\$63,206

Cost Per kw. hr. and ratio

Description	Stage I B	Stage II BB	Stage III BB
Cost per kw. -hr (delivered)	6.93	7.12	6.15
All steam	1.22	1.18	1.12
As Planned			

[4792]

JA 384

Exhibit 100 - 17
Sheet 1 of 15
Project No. 2289
Rocky Mountain Power Co
Witness: Cotton

MOUNTAIN - MIDWEST POWER POOL

Comparison

Assuming steam-electric generation at Columbus, Nebraska

Serving only Nebraska and Kansas

vs.

Purchased power from Rocky Mountain Power Company,

Oak Creek Power Company and East-West Intertie, Inc.,

Serving Nebraska and Kansas

Exhibit 100-17
Sheet 2 of 15
Project No. 2289
Rocky Mountain Power Co.
Witness: Cotton

1. a. Cost of money equals 4% for generating plant at Columbus, Nebraska and step-up substation, transmission lines and switching stations along its route.

b. Same as above except cost of money equals 5.5% for generating station at Columbus, Nebraska, and its step-up station. The cost of money for transmission and other substations is 4%.
2. Amortization period equals 35 years for steam generation and its step-up substation and 50 years for all other substations, switchyards and transmission lines.

Amortization basis equals sinking funds at interest rate.
3. Fuel cost equals 28.5¢ per million BTU at Columbus.
4. Generating plant. 2400 psi., 1000°F., 1000°F., using 300 mw. units. (Same units as for Oak Creek Plant with heat rate adjusted for lower annual plant factor. Cooling towers employed.
5. Transmission and switching added to serve same points as per Mountain-Midwest Power Pool system. (See sketches).
6. Annual load factor=60%.

[4794]

Exhibit 100 - 17
 Sheet 3 of 15
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: Cotton

MOUNTAIN - MIDWEST POWER POOL

Analysis assuming generation at Columbus, Nebraska, and serving only Nebraska and Kansas.

<u>Stage</u>	<u>Loads</u>		
	<u>IB</u>	<u>IIBB</u>	<u>IIIBE</u>
Loads (losses not inc.) mw.			
Archer	150	183	317
North Platte	346	472	835
Columbus	270	385	803
Total mw.	766	1040	1955
Annual system l. f.	60%	60%	60%
Annual Energy sold (millions kwh)	4026	5466	10,276
System losses and Station Use	403	347	1,028
Total Gen. (millions kwh)	4429	6013	11,304
Equiv. mw.	850	1150	2,150
Equiv. mw. (at 95% peak eff.)	895	1210	2,260
Units installed	<u>MW</u>	<u>MW</u>	<u>MW</u>
Used	3-300=900	4-300=1200	8-300=2400
Spare	1-300	1-300	1-300
Total units	4=1200 mw.	5=1500 mw.	9=2700 mw.

Summary

Estimated Capital Costs

<u>Schedule</u>	<u>IB</u>	<u>IIBB</u>	<u>IIIBE</u>
Steam plant (without swyd.)	\$150,000,000	\$187,500,000	\$337,500,000
Sub. and Swyds.	(7,817,450*	10,170,730*	18,242,940*
	(6,742,040	7,058,500	11,843,560
Transmission	24,618,920	49,527,500	74,146,400
Total	\$189,178,410	\$254,256,730	\$441,732,900

* = Switchyard at Powerplant

Exhibit 100-17
 Sheet 4 of 15
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: Cotton

Estimated Capital Cost of Generation (without substations)

<u>Schedule</u>	<u>IB</u>	<u>IIBB</u>	<u>IIIBB</u>
Unit Cost (2400 psi) (1000°F) (1000°F)	\$125/kw	\$125/kw	\$125/kw
Capital Cost	\$150,000,000	\$187,500,000	\$337,500,000

Estimated Cost of Substations Case IB - All 230 kv

Columbus (15,000 MVA)

Feeder bays	3 @ \$276,000 =	\$ 828,000
Transformer bays	4 @ 204,000 =	816,000
Coupler bay	1 @ 190,000 =	190,000
Transformers, 3φ, 220kv		
Gen. 300 mw	1,200mw x 3:33 =	3,996,000
Total		\$5,830,000
Contingencies (& R. O. W.) (10%)		583,000
Eng. & Overheads (15%)		961,950
Int. during constr. (6%)		442,500
Total		\$7,817,450

North Platte (7,500 MVA)

Feeder Bays	6 @ \$236,000 =	\$1,416,000
Transformer bays	2 @ 160,000 =	320,000
Coupler bay	1 @ 150,000 =	150,000
Transformer, 3φ, 220kv-Cond.	2 x 60,000 @ \$7 =	840,000
Synch. Conder.	2x 60,000 @ \$15 =	1,800,000
Total		\$4,526,000
Contingencies & R. O. W. (10%)		452,600
Eng. & overheads (15%)		746,790
Int. during construc. (6%)		343,520
Total		\$6,068,910

Archer

Feeder Bays	2 @ \$236,000 =	\$ 472,000
Air Switch	1 @ 30,000 =	30,000
Total		\$ 502,000
Contingencies & R. O. W. (10%)		50,200
Eng. & overheads (15%)		82,830
Int. during constr. (6%)		38,100
Total		\$ 673,130
Total		\$14,559,490

[4796]

Exhibit 100 - 17
 Sheet 5 of 15
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: Cotton

Estimated Cost of Substations. Case IIB. All 230 kv.

Columbus (15,000 MVA)

Feeder bays	5 @ \$276,000	=	\$1,380,000
Transformer bays	5 @ 204,000	=	1,020,000
Coupler bay	1 @ 190,000	=	190,000
Transformers 230 kv-gen. 300 mw. x 5 @ 3.33		=	4,995,000
Total			\$7,585,000
Contingencies & r.o.w. (10%)			758,500
			\$8,343,500
Engineering & Overheads (15%)			1,251,525
			\$9,595,025
Interest during construction (6%)			575,705
Total			\$10,170,730

North Platte (7500 MVA)

Feeder bays	7 @ \$236,000	=	\$1,652,000
Transformer bay	2 @ 160,000	=	320,000
Coupler bay	1 @ 150,000	=	150,000
Transf. 3 ϕ 230 - cond. 2 x 60,000	@ \$7	=	840,000
Syn. condenser 2 x 60,000	@ \$15		1,800,000
Total			\$4,762,000
Contingencies (10%)			476,200
			\$5,238,200
Engineering & Overheads (15%)			785,730
			\$6,023,930
Interest during construction (6%)			361,440
Total			\$6,385,370

Archer (7500 MVA)

Feeder bays	2 @ \$236,000	\$	472,000
Air Switch	1 @ 30,000		30,000
Total		\$	502,000
Contingencies & r.o.w. (10%)			50,200
		\$	552,200
Engineering & Overheads (15%)			82,830
		\$	635,030
Interest during construction (6%)			38,100
		\$	673,130

TOTAL

\$17,229,230

Exhibit 100 - 17
 Sheet 6 of 15
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: Cotton

Estimated Cost of Substations, Case IIIBB, All 230 kv.

Columbus (15,000 MVA)

Feeder bays	8 @ \$276,000	=	\$ 2,208,000
Transformer bays	9 @ 204,000	=	1,836,000
Coupler bays	3 @ 190,000	=	570,000
Transformers 9 x 300 = 2700 mw.	@ 3.33	=	8,991,000
Total			\$13,605,000
Contingencies & r.o.w (10%)			1,360,500
			\$14,965,500
Engineering & Overheads (15%)			2,244,820
			\$17,210,320
Interest during construction (6%)			1,032,620
Total			\$18,242,940

North Platte (7500 MVA)

Feeder bays	11 @ \$236,000	=	\$ 2,596,000
Transformer bay	3 @ 160,000	=	480,000
Coupler bay	3 @ 150,000	=	450,000
Transformer 3 ϕ 230 kv-Cond.	= 2 x 80,000 @ \$7	=	840,000
Synch. Cond.	2 x 60,000 @ \$15	=	1,800,000
Transformer 3 ϕ 230 kv-Cond.	100,000 @ \$7	=	700,000
Synch. Cond.	100,000 @ \$10	=	1,000,000
Total			\$ 7,866,000
Contingencies & r.o.w. (10%)			786,600
			\$ 8,652,600
Engineering & Overheads (15%)			1,297,890
			\$ 9,950,490
Interest during construction (6%)			597,030
Total			\$10,547,520

Archer (7500 MVA)

Feeder bays	4 @ \$236,000	=	\$ 944,000
Air Switch	1 @ \$ 30,000	=	30,000
Total			\$ 974,000
Contingencies & r.o.w. (10%)			97,400
			\$ 1,071,400
Engineering & Overheads (15%)			160,710
			\$ 1,232,110
Interest during construction (6%)			73,930
Total			\$ 1,306,040
TOTAL			\$30,096,500

[4798]

Exhibit 100 - 17
 Sheet 7 of 15
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: Cotton

Estimated cost of transmission lines. All 230 kv.

Stage IB

1 circuit North Platte to Archer, 222 miles @ \$45,000	= \$ 9,990,000
1 circuit Columbus to North Platte, 186 miles	=
@ \$45,000	8,370,000
Contingencies & r. o. w. (10%)	1,836,000
Subtotal	\$20,196,000
Engineering & Overheads (15%)	3,029,400
	\$23,225,400
Interest during construction (5%)	1,393,520
TOTAL	<u>\$24,618,920</u>

Stage IIBB

From above	= \$20,196,000
2 circuits Columbus to North Platte, 186 miles	=
@ \$45,000	16,740,000
Subtotal	\$36,936,000
Contingencies & r. o. w. (10%)	= 3,693,600
Subtotal	\$40,629,600
Engineering and Overheads (15%)	= 6,094,440
	\$46,724,040
Interest during construction (6%)	= 2,803,460
TOTAL	<u>\$49,527,500</u>

Stage IIIBB

From above	= \$36,936,000
1 circuit Columbus to North Platte 186 miles	=
@ \$45,000	8,370,000
1 circuit North Platte to Archer 222 miles	=
@ \$45,000	9,990,000
	\$55,296,000
Contingencies & r. o. w. (10%)	5,529,600
	\$60,825,600
Engineering and Overheads (15%)	9,123,840
	\$69,949,440
Interest during construction (6%)	4,196,960
TOTAL	<u>\$74,146,400</u>

Exhibit 100 - 17
 Sheet 8 of 15
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: Cotton

Summary of Annual Costs

4% Interest basis (on all features)

<u>Schedule</u>	<u>IB</u>	<u>IIBB</u>	<u>IIIBB</u>
Generation	\$24,303,000	\$31,275,000	\$55,735,000
Substation at Powerplant	720,000	925,000	1,664,500
Switching along trans.	478,000	532,000	899,000
Transmission	<u>1,390,600</u>	<u>2,970,600</u>	<u>4,460,200</u>
Total	\$26,891,600	\$35,702,600	\$62,758,700

5.5% Interest basis on Gen. (Trans. = 4%)

Generation	\$26,013,000	\$33,425,000	\$59,555,000
Substation at Powerplant	810,000	1,043,000	1,874,500
Switching along trans. (inc. 4% int.)	478,000	532,000	899,000
Transmission (inc. 4% int.)	<u>1,490,600</u>	<u>2,970,600</u>	<u>4,460,200</u>
TOTAL	<u>\$28,791,600</u>	<u>\$37,970,600</u>	<u>\$66,788,700</u>

[4800]

Exhibit 100 - 17
 Sheet 9 of 15
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: Cotton

Annual Costs

Generation (at Columbus)

4% int.

5.5% int.

Fixed charges

Cost of money	4.00%	5.50%
Amortization (35 yrs.)	1.36	1.00
Interim replacements	0.35	0.35
Insurance	0.25	0.25
Payment in lieu of taxes	0.50	0.50
Total	6.46	7.60

Schedule

IB

IIBB

IIIBB

4% basis	\$ 9,690,000	\$12,100,000	\$21,800,000
5.5% basis	11,400,000	14,250,000	25,620,000

Fixed O & M

No load fuel (*\$1.37/kw)	\$ 1,642,000	\$ 2,055,000	\$ 3,700,000
O & M	1,365,000	1,600,000	1,910,000
Admin. & Gen.	341,000	400,000	475,000
Total	\$ 3,348,000	\$ 4,055,000	\$ 6,085,000

Load fuel, etc.

Energy (**2.38 mills/kwh)	\$10,530,000	\$14,320,000	\$26,900,000
O & M (var.)	735,000	800,000	950,000
Total	\$11,265,000	\$15,120,000	\$27,850,000

Generation Annual Cost (Powerplant Sub. not inc.)

4% interest basis	\$24,303,000	\$31,275,000	\$55,735,000
5.5% interest basis	\$26,013,000	\$33,425,000	\$59,555,000

Load factor equals 60%.

$$* \frac{28.5}{15.4} \times \$0.74/\text{kw/yr.} = \$1.37/\text{kw/yr.}$$

$$**1.27 \times \frac{28.5}{15.4} \times 1.013 = 2.38 \text{ mills/kwh}$$

1.013 = increased
heat rate

Exhibit 100-17
 Sheet 10 of 15
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: Cotton

Annual Cost of Substations at Generation

<u>Basis</u>	<u>4%</u>	<u>5.5%</u>
<u>Fixed charges</u>		
Cost of money	4.00 %	5.50 %
Amortization (35 yrs)	1.35	1.00
Replacement	0.35	0.35
Insurance	0.25	0.25
Taxes (in lieu)	0.50	0.50
Total	6.45 %	7.60 %
O & M	\$0.15/kva	\$0.15/kva
Admin. & Gen.	20% of O&M	20% of O&M

<u>Schedule</u>	<u>IB</u>	<u>IIBB</u>	<u>IIIBB</u>
4% basis	\$720,000	\$ 925,000	\$1,664,500
5.5% basis	810,000	1,043,000	1,874,500

Annual Cost of Switching Stations
 (not inc. substation at Power plant)

<u>Fixed charges</u>	
Cost of money	4.00%
Amortization (50 yrs)	0.66
Replacement	0.35
Insurance	0.25
Taxes (in lieu of)	0.50
Total	5.76
O & M	\$0.15/kva
Admin & Gen.	20% of O & M

<u>Schedule</u>	<u>IB</u>	<u>IIBB</u>	<u>IIIBB</u>
	\$478,000	\$532,000	\$899,000

[4802]

Exhibit 100 - 17
 Sheet 11 of 15
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: Cotton

Annual Cost of Transmission Lines

Fixed Charges	4.00%
Amortization (50 yrs.)	0.66
Replacement	0.10
Insurance	<u>0.10</u>
Total	4.86%

O & M	\$350/mile
Admin. & Gen.	20% of O & M
Taxes (in lieu of)	\$304/mile

<u>Schedule</u>	<u>IBB</u>	<u>IIBB</u>	<u>IIIBB</u>
	<u>406 mi.</u>	<u>780 mi.</u>	<u>1188 mi.</u>
O & M @ \$350/mi.	\$ 142,000	\$ 273,000	\$ 416,000
Admin. & Gen. (20% of O & M)	28,400	54,600	33,200
Taxes (in lieu of) \$304/mi.	123,200	237,000	361,000
Fixed charges, 4% & 50 yrs. (4.86%)	<u>1,197,000</u>	<u>2,406,000</u>	<u>3,600,000</u>
TOTAL	<u>\$1,490,600</u>	<u>\$2,970,600</u>	<u>\$4,460,200</u>

Exhibit 100-17
 Sheet 12 of 15
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: Cotton

Comparison of power costs of system with
generation at Columbus, Nebraska with
hydro-steam system as planned

<u>Stage</u>	<u>IB</u>	<u>IIBB</u>	<u>IIIBB</u>
MW sold in Nebraska	766	1040	1955
Annual load factor	60%	60%	60%
Annual kwh sold in Nebraska (millions)	4026	5466	10,276

4% interest basis (all features)

Cost per kwh sold in Nebraska (mills/kwh)	6.68	6.52	6.12
If sold from East-West Intertie (mills/kwh)*	5.56	5.57	5.57
Ratio of above	1.20	1.17	1.10

5 5% interest basis on generation (4% on other)

Cost per kwh sold in Nebraska (mills/kwh)	7.15	6.93	6.51
If sold from East-West Intertie (mills/kwh)*	5.90	5.93	5.93
Ratio of above	1.21	1.17	1.10

* \$12.50/kw at receiving bus for 5.5% interest basis. \$10.62 for 4.0% interest basis.

2.1 mills/kwh at receiving bus

1.1 mills/kwh for transmission to Archer

1.5 mills/kwh for transmission beyond Archer

STAGE I B

760 MW

Exhibit 100-17

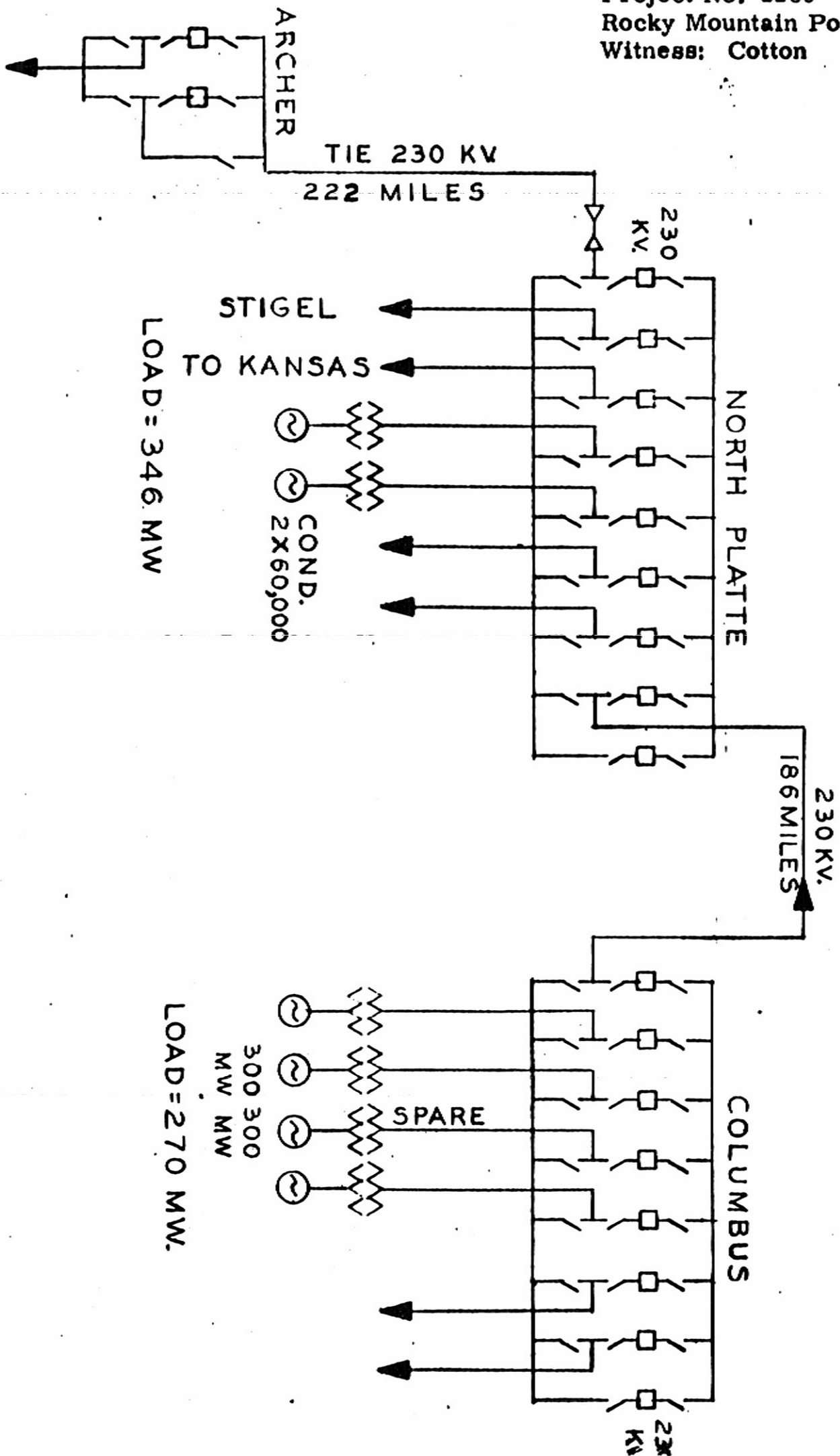
Sheet 13 of 15

Project No. 2289

Rocky Mountain Power Co.

Witness: Cotton

LOAD=150 MW.



[4805]

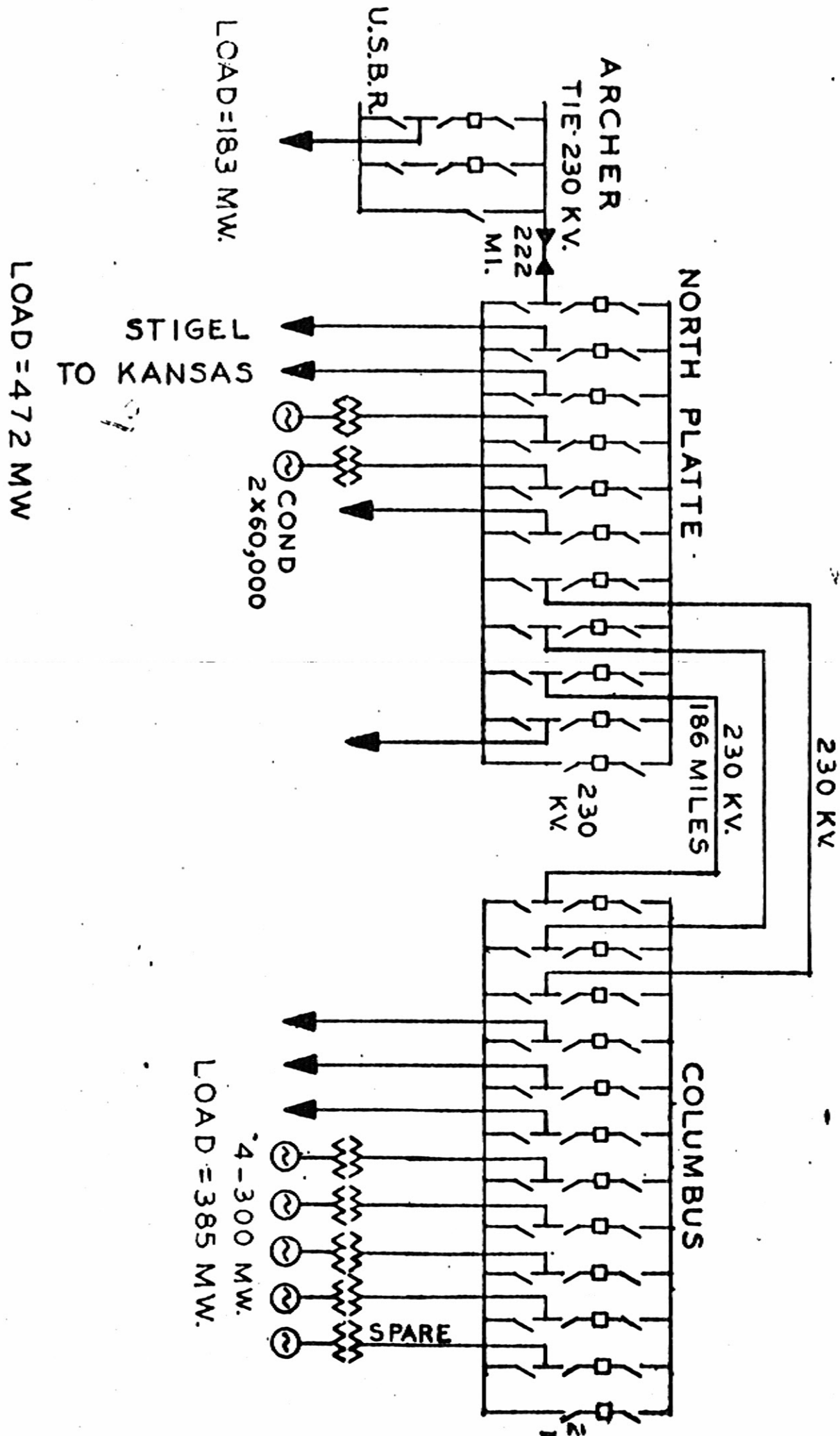
STAGE II B.B.

1040 MW

Exhibit 100-17

Sheet 14 of 15

Project No. 2289

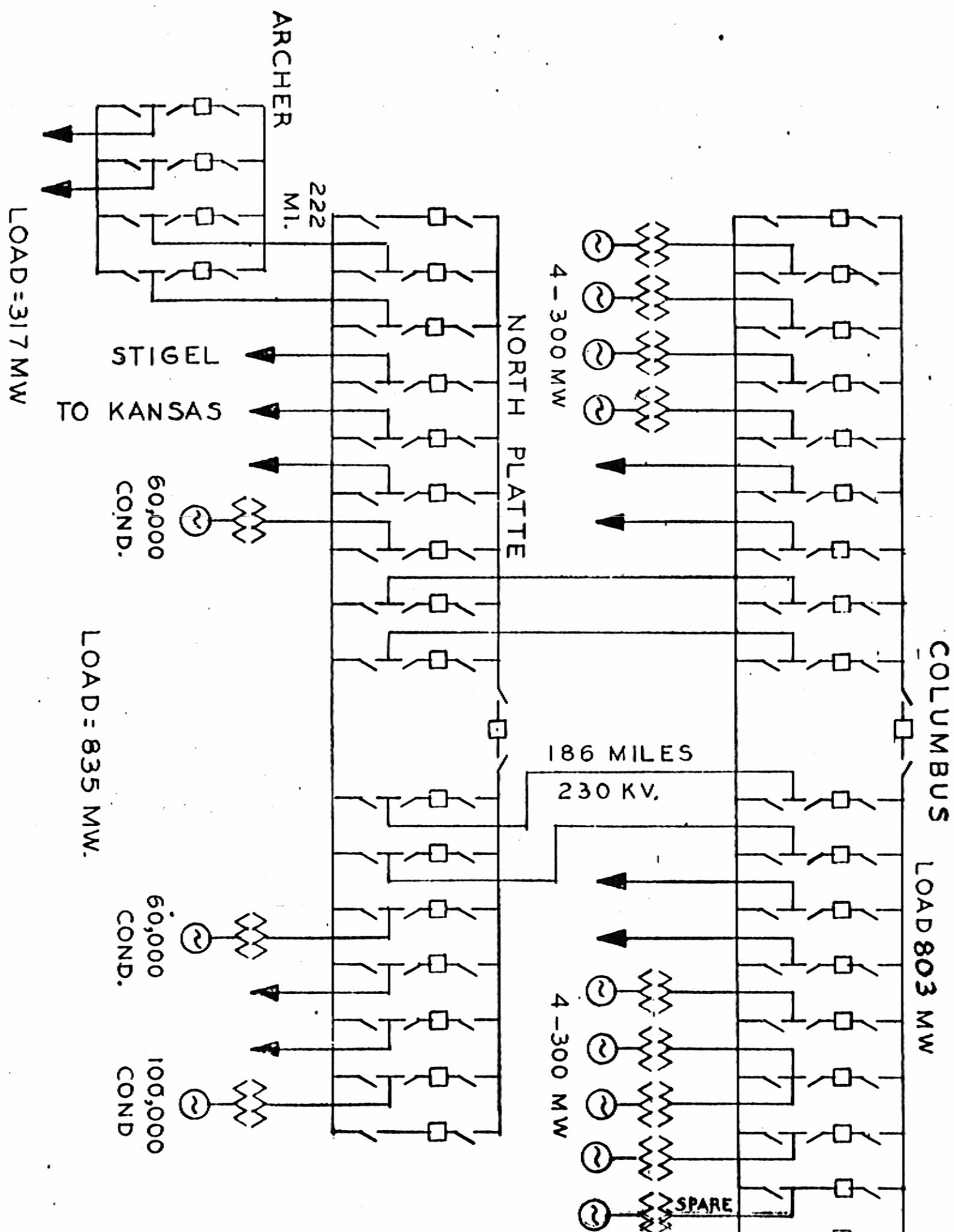


[4806]

STAGE III B

1955 MW

Exhibit 100-17
Sheet 15 of 15
Project No. 2289



[4807]

Exhibit 100-16
 Consisting of 6 pages
 Project No. 2289
 Rocky Mountain Power Co.
 Witness: COTTON

ANALYSIS OF
MOUNTAIN - MIDWEST POWER POOL
SYSTEM, AS PLANNED

A. Pumped Storage Plants Plus Steam Generation

Total Available Megawatts, Peaking

<u>Description</u>	<u>Stage I B</u>	<u>Stage II BB</u>	<u>Stage III BB</u>
	<u>peak</u>	<u>peak</u>	<u>peak</u>
Steam	600	900	1,500
Pumped hydro	300	400	800
TOTAL available mw. peaking	900	1300	2,300

Capital Cost (x \$1,000)

	<u>Stage I B</u>	<u>Stage II BB</u>	<u>Stage III BB</u>
	<u>Cost & \$/peak kw.</u>	<u>Cost & \$/peak kw.</u>	<u>Cost & \$/peak kw.</u>
Steam & substa.	\$ 85,647=143.0	\$124,987=138.9	\$205,932=137.2
Pumped hydro & substation	41,704=139.2	44,904=112.2	101,526=127.0
Subtotal	127,351	169,891	307,458
Trans. & switching stations	60,600	115,612	180,425
TOTAL	\$187,951	\$285,503	\$487,883

[4808]

JA 400

ANNUAL PEAK LOAD AND RESOURCE DATA—COMBINED EASTERN AND WESTERN AREA

(All Figures in Megawatts)

	1960 MW	1961 MW	1962 MW	1963 MW	1964 MW	1965 MW	1966 MW	1967 MW	1968 MW	1969 MW	1970 MW	1971 MW	1972 MW	1973 MW
SUMMER PEAK LOADS (at system inlet)														
Net Firm Load														
CPPD-Western	28	29	31	32	49 ^C	52 ^C	41	43	46	50	53	57	61	65
Rurals-Western	30.2	33.2	35.6	41.3	44.7	58.6	63.3	68.4	71.7	77.1	84.6	90.9	97.2	103.5
OPPD	377	422	431	475	525	585	635	690	750	815	880	950	1020	1095
CPPD-Eastern	226	250	239	289	338	362	388	416	446	477	511	547	586	628
NPPS -A-	230	249	233	314	343	368	391	415	439	465	491	519	547	577
28 Municipals	*	*	*	*	87.2 ^D	92.4	99.0	106.5	114.8	135.6	131.4	141.7	152.1	*
3 Municipals -K-	*	*	*	*	65.2	69.9	74.8	80.1	85.8	92.0	98.5	105.4	113.0	*
Subtotals	891.2	983.2	969.6	1151.3	1452.1	1587.9	1692.1	1819.0	1953.3	2111.7	2249.5	2411.0	2576.3	2468.5
Firm Resources -B-														
CPPD-Western	33	33	33	58	58	58	58	58	58	58	58	58	58	*
Rurals-Western -L-	30.2	33.2	35.6	41.3	44.7	58.6	63.3	68.4	71.7	77.1	84.6	90.9	97.2	103.5
OPPD	444	474	494	629	633	634	659	694	802	802	802	802	802	*
CPPD+NPPS-Eastern -E--J-	528	599	606	606	657	719 ^M	770 ^M	770 ^M	788 ^M	806 ^M	823 ^M	823 ^M	823 ^M	823 ^M
28 Municipals	*	*	*	*	163.2	167.3	180.1	181.8	184.2	184.2	191.3	194.7	197.4	*
3 Municipals -K-	*	*	*	*	76.8	78.2	89.8	89.8	89.8	89.8	89.8	89.8	89.8	*
Subtotals	1035.2	1139.2	1168.6	1334.3	1632.7	1715.1	1820.2	1862.0	1993.7	2017.1	2048.7	2058.4	2067.4	1786.5
Surplus or Deficiency														
CPPD-Western	5	4	2	26	9	6	17	15	12	8	5	1	(3)	
Rurals-Western	0	0	0	0	0	0	0	0	0	0	0	0	0	
OPPD	67	52	63	154	108	49	24	4	52	(13)	(78)	(148)	(218)	
CPPD+NPPS-Eastern	72	100	134	3	(24)	(11) ^F	(9) ^F	(61) ^G	(57) ^H	(136)	(179)	(243)	(310)	(74)
28 Municipals	*	*	*	*	76.0	74.9	81.1	75.3	69.4	48.6	59.9	52.0	45.3	*
3 Municipals -K-	*	*	*	*	11.6	8.3	15.0	9.7	4.0	(2.2)	(8.7)	(15.6)	(23.2)	*
Combined Surplus or (Deficiency)	144	156.0	199.0	183.0	180.6	127.2	128.1	43.0	40.4	(94.6)	(200.8)	(352.6)	(508.9)	(682.1)
Surplus or (Deficiency) Less 28 Municipals	*	*	*	*	104.6	52.3	47.0	(32.3)	(29.0)	(143.2)	(260.7)	(405.6)	(554.2)	*

FOOTNOTES

- A NPPS load estimates include Rural load growth above Equity.
 B Firm Power purchases and firm generating capacity (generating capability less required reserves).
 C Includes 14 MW of out-of-state sales.
 D The portion of loads included in municipal estimates which are supplied by and included in loads of other agencies.
 E Estimate used for U.S.B.R. Class II power purchases.
 F Reserve capacity is available under existing interconnection contracts.
 G Expected to be available from U.S.B.R.
 H Available from OPPD and other utilities.
 J Includes 100 MW of Summer Firm which is withdrawable upon three years' notice.
 K Includes Hastings, Grand Island and Fairbury.
 L Purchase--Tri-State G and T.
 M Includes 85 MW gross nuclear generation at CPPD Sheldon Station.

SUMMARY
NEBRASKA ANNUAL PEAK LOADS AND RESOURCES

Includes Omaha Public Power District, combined NPPS - Consumers System
Consumers Western System, and all Rural Systems and 31 Municipal Systems,
From "Revised Report on Loads and Resources"
November 13, 1964, by the Nebraska Power Industries Committee

	Historical								Estimated					
Peak Loads (system inlet)	1960 MW	1961 MW	1962 MW	1963 MW	1964 MW	1965 MW	1966 MW	1967 MW	1968 MW	1969 MW	1970 MW	1971 MW	1972 MW	1973 MW
Total Net Firm Load	891	983	970	1151	1452	1588	1692	1819	1953	2112	2250	2411	2576	2469
Total Net Firm Resources	1035	1139	1169	1334	1633	1715	1820	1862	1993	2017	2049	2058	2067	1787
Total Net Surplus (1)	144	156	199	183	181	127	128	43	40	-	-	-	-	-
Total Net Deficiency (2)	-	-	-	-	-	-	-	-	-	95	201	353	509	682
Total Net Surplus less 28 Municipals (3)	*	*	*	*	105	52	47	-	-	-	-	-	-	-
Total Net Deficiency less 28 Municipals (3)	-	-	-	-	-	-	-	32	29	143	261	406	554	*

Purchases of power and energy from out-of-state sources and presently approved generation are included in resources shown through 1966.

If total net deficiency is met by means of generation within Nebraska, the quantities shown must be increased in the amount of the required reserves. Also, further increase will be necessary by reason of lack of interconnection between all of the various power suppliers. Additional power sources and loads will require extension to existing and additional new heavy transmission lines.

There are 28 municipals which, for various reasons, lack either or both an interchange contract or physical interchange facilities with NPPS and their surplus generation is, therefore, unavailable for meeting the State's peak load requirements.

Information not available for municipal loads and resources.

TABLE I

Exhibit 100-34.
Page 1 of 12 Pages.

CONSUMERS PUBLIC POWER DISTRICT PROJECTIONS OF LOAD DEMAND
 AND DEFICIENCY IN POWER RESOURCES.

Year	Megawatts				
	Peak Load C.P.P.D.	Power Resources*			Power Deficiency
		N.P.P.S.	U.S.B.R.	Gener.	
1966	366				
1967	431				
1968	469				
1969	509				
1970	553	132	98	196	127
1971	601	132	98	196	175
1972	653	132	98	196	227
1973	705	132	98	196	279
1974	761	132	98	196	335
1975	818	132	98	196	392
1976	879	132	98	196	453
1977	940	132	98	196	514
1978	1006	132	98	196	580
1979	1071	132	98	196	648
1980	1140	132	98	196	714
1981	1214	132	98	196	788
1982	1293	132	98	196	867
1983	1374	132	98	196	948
1984	1463	132	98	196	1037
1985	1558	132	98	196	1132.

* Power Resources include deductions of reserve requirements.

Source: Consumers Public Power District.

TABLE II

Exhibit 100-34.

Page 2 of 12 pages.

CONSUMERS PUBLIC POWER DISTRICT
PROJECTIONS OF LOAD DEMANDS ON AVERAGE AND POSSIBLE MAXIMUM RATES
OF GROWTH AND CORRESPONDING DEFICIENCY IN RESOURCES

Average rate of load growth as conservative Tab-I up to 1976 & 7.5% per annum thereafter.				Maximum rate of load growth 8.6% per annum		
Year	Peak Load MW	Total Resources MW	Deficiency MW	Peak Load MW	Total Resources MW	Deficiency MW
1970	553	426	127	553	426	127
1971	601	426	175	601	426	175
1972	653	426	227	653	426	227
1973	705	426	279	709	426	283
1974	761	426	335	770	426	344
1975	818	426	392	836	426	410
1976	879	426	453	908	426	482
1977	955	426	529	986	426	560
1978	1042	426	616	1075	426	649
1979	1120	426	694	1167	426	741
1980	1204	426	778	1267	426	841
1981	1294	426	868	1376	426	950
1982	1391	426	965	1494	426	1068
1983	1495	426	1069	1623	426	1197
1984	1607	426	1181	1762	426	1336
1985	1727	426	1301	1914	426	1488

[4812]

Source: Consumers Public Power District.

Total Resources include deductions of reserve requirements.

TABLE III

Exhibit 100-34.

Page 3 of 12 pages.

NEBRASKA PUBLIC POWER SYSTEM PROJECTIONS OF LOAD DEMAND
AND DEFICIENCY IN POWER RESOURCES

Year	Megawatts				
	Peak Load N.P.P.S.	Own Generation	U.S.B.R.	Other Purchases	Deficiency
1970	491	202	146	45	98
1971	519	202	146	45	126
1972	548	202	146	45	155
1973	578	202	146	45	185
1974	610	202	146	45	217
1975	644	202	146	45	251
1976	679	202	146	45	286
1977	716	202	146	45	323
1978	755	202	146	45	362
1979	796	202	146	45	403
1980	840	202	146	45	447
1981	886	202	146	45	493
1982	935	202	146	45	542
1983	986	202	146	45	593
1984	1040	202	146	45	647
1985	1097	202	146	45	704.

Source: Nebraska Power Review Board.
Nebraska Power Industry Committee.

Own Generation, U.S.B.R. and other Purchasers include deductions
of reserve requirements.

TABLE IV

Exhibit 100-34.

Page 4 of 12 pages.

SUMMATION OF CONSUMERS PUBLIC POWER DISTRICT CONSERVATIVE
PROJECTIONS AND NEBRASKA PUBLIC POWER SYSTEM PROJECTIONS.

Year	Megawatts				Power Demand
	Load	Load Plus 12%	Actual Gener.	Resources Deficiency	
1970	1045	1170	819	351	226
1971	1121	1260	819	441	302
1972	1201	1350	819	531	382
1973	1283	1440	819	621	464
1974	1371	1540	819	721	552
1975	1462	1640	819	821	643
1976	1558	1745	819	926	739
1977	1656	1855	819	1036	837
1978	1761	1975	819	1156	942
1979	1867	2090	819	1271	1048
1980	1980	2220	819	1401	1161
1981	2100	2350	819	1531	1281
1982	2228	2500	819	1681	1409
1983	2360	2640	819	1821	1541
1984	2503	2805	819	1986	1684
1985	2655	2985	819	2166	1836

[4814]

SOURCES: Consumers Public Power District.
Nebraska Power Review Board.
Nebraska Power Industry Committee.

Note: Resources deficiencies includes reserve requirements
whereas Power Demand excludes reserve requirements.

TABLE V

Exhibit 100-34.

Page 5 of 12 pages.

NEBRASKA MUNICIPAL UTILITIES
PROJECTIONS OF LOAD DEMANDS AND POWER RESOURCE DEFICIENCIES

Year	Megawatts						
	Municipal Utilities Without NPPS Intercon.		Municipal Utilities With NPPS Intercon.		Municipal Utilities Total		Deficiency
	Net firm load	Firm Resources	Net firm load	Firm Resources	Net firm load	Firm Resources	
1970	131.4	184.2	98.5	89.8	229.9	274.0	-
1971	141.7	184.2	105.4	89.8	247.1	274.0	-
1972	152.1	184.2	113.0	89.8	265.1	274.0	-
1973	162.7	184.2	120.9	89.8	283.6	274.0	9.6
1974	174.1	184.2	129.3	89.8	303.4	274.0	29.4
1975	186.3	184.2	132.4	89.8	318.7	274.0	44.7
1976	199.3	184.2	141.7	89.8	341.0	274.0	67.0
1977	213.1	184.2	151.6	89.8	364.7	274.0	90.7
1978	227.9	184.2	162.2	89.8	390.1	274.0	116.1
1979	243.8	184.2	173.6	89.8	417.4	274.0	143.4
1980	260.9	184.2	185.7	89.8	446.6	274.0	172.6
1981	279.1	184.2	198.7	89.8	477.8	274.0	203.8
1982	298.6	184.2	212.6	89.8	511.2	274.0	237.2
1983	319.5	184.2	227.5	89.8	547.0	274.0	273.0
1984	341.8	184.2	244.1	89.8	585.9	274.0	311.9
1985	365.7	184.2	261.2	89.8	626.9	274.0	352.9

Note 1. Rate of growth of load taken same as up to 1972, 7 percent.

Note 2. As supplies from Basin Electric doubtful, firm resources taken as 184.2.

Source: Nebraska Power Industry Committee.
Nebraska Power Review Board.

TABLE VI

Exhibit 100-34.
Page 6 of 12 pages.

OMAHA PUBLIC POWER DISTRICT
 PROJECTIONS OF LOAD DEMAND AND RESOURCES AND DEFICIENCIES IN RESOURCES

Year	Megawatts				
	Estimated loads	Firm Purchase	Own plant capability in 1970	Total resource and purchase capability	Deficiency
1970	860	59	850	909	-
1971	930	59	850	909	21
1972	1,000	59	850	909	91
1973	1,070	59	850	909	171
1974	1,145	59	850	909	236
1975	1,220	59	850	909	311
1976	1,300	59	850	909	391
1977	1,380	59	850	909	471
1978	1,460	59	850	909	551
1979	1,540	59	850	909	631
1980	1,620	59	850	909	711
1981	1,710	59	850	909	801
1982	1,800	59	850	909	891
1983	1,890	59	850	909	981
1984	1,980	59	850	909	1,071
1985	2,080	59	850	909	1,171

[4816]

Note 1. Capability is not the same as economic rating.

Note 2. Load growth rates in percent per annum used by O.P.P.D.
 from 1976 are lower than National Power Survey for towns.

Source: Omaha Public Power District up to 1980 only.

TABLE VII

Exhibit 100-34.

Page 7 of 12 pages.

SUMMATED PROJECTIONS OF LOADS AND RESOURCES FOR ALL NEBRASKA UTILITIES
AND CORRESPONDING DEFICIENCY IN RESOURCES

Year	MEGAWATTS								
	CPPD & NPPS TABLE IV		OPPD TABLE VI		Municipal Util- ities, TABLE V		Total of all Nebraska Utilities		
	Firm Load	Resources	Firm load	Resources	Firm load	Resources	Firm load	Resources	Deficiency
1970	1045	819	860	909	230	274	2135	2002	133
1971	1121	819	930	909	247	274	2298	2002	296
1972	1201	819	1000	909	265	274	2466	2002	464
1973	1283	819	1070	909	284	274	2637	2002	635
1974	1371	819	1145	909	303	274	2819	2002	817
1975	1462	819	1220	909	319	274	3001	2002	999
1976	1558	819	1300	909	341	274	3199	2002	1197
1977	1656	819	1380	909	365	274	3401	2002	1399
1978	1761	819	1460	909	390	274	3611	2002	1609
1979	1867	819	1540	909	417	274	3824	2002	1822
1980	1980	819	1620	909	447	274	4047	2002	2045
1981	2100	819	1710	909	478	274	4288	2002	2286
1982	2228	819	1800	909	511	274	4539	2002	2537
1983	2360	819	1890	909	547	274	4797	2002	2795
1984	2503	819	1980	909	586	274	5069	2002	3067
1985	2655	819	2080	909	627	274	5362	2002	3361

Sources: See respective tables.

TABLE VIII

Exhibit 100-34.

Page 8 of 12 pages.

BLACK HILLS POWER AND LIGHT COMPANY PROJECTIONS OF LOAD DEMANDS
AND DEFICIENCIES AND POWER RESOURCES

Year	Megawatts		
	Demand	Resources	Deficiencies
1970	63	21	42
1971	67	21	46
1972	72	21	51
1973	77	21	56
1974	82	21	61
1975	88	21	67
1976	94	21	73
1977	101	21	80
1978	108	21	87
1979	116	21	95
1980	124	21	103
1981	133	21	112
1982	142	21	121
1983	152	21	131
1984	163	21	142
1985	174	21	153

[4818]

TABLE IX

PROJECTIONS OF LOAD DEMAND FOR SUNFLOWER, CENTRAL KANSAS, WHEATLAND
AND PIONEER WITH AND WITHOUT MUNICIPALITIES

Year	Megawatts			
	Total Co-op Deficiency	Municipalities Load Demand	Total for 4 Co-ops plus Municipalities	Total Including Retired Plant of Co-ops
1970	85	43	128	
1971	95	46	141	
1972	107	49	156	
1973	119	53	172	
1974	131	56	187	
1975	145	60	205	278
1976	161 (+ 73)	64	225	298
1977	176 (+ 73)	69	245	318
1978	194 (+ 73)	74	268	341
1979	211 (+ 73)	79	290	363
1980	230 (+ 73)	84	314	387
1981	323	90	340	413
1982	342	95	364	437
1983	363	101	391	464
1984	384	107	418	491
1985	407	113	447	520

The 73 megawatts is present generating plant which will require retirement from 1976.

Source: Sunflower Co-operative, Wakeenee, Kansas.

TABLE X

Exhibit 100-34.

Page 10 of 12 pages.

PROJECTIONS OF MINIMUM POWER DEFICIENCIES TO BE MET BY NEBRASKA UTILITIES
WITH THE ADDITION OF THE KANSAS COOPERATIVES AND
BLACK HILLS POWER AND LIGHT COMPANY.

Megawatts									
Year	All Nebraska Utilities from Table VII		Black Hills Power & Light from Table VIII		Kansas 4 Co-ops with Municipalities from Table IX		Summated Total		
	Firm load	Resources	Firm load	Resources	Firm load	Resources	Firm load	Resources	Deficiency
1970	2135	2002	63	21	201	73	2399	2096	303
1971	2298	2002	67	21	214	73	2579	2096	483
1972	2466	2002	72	21	229	73	2767	2096	671
1973	2637	2002	77	21	245	73	2959	2096	863
1974	2819	2002	82	21	260	73	3161	2096	1065
1975	3001	2002	88	21	278	-	3367	2023	1344
1976	3199	2002	94	21	298	-	3591	2023	1568
1977	3401	2002	101	21	318	-	3820	2023	1797
1978	3611	2002	108	21	341	-	4060	2023	2037
1979	3824	2002	116	21	363	-	4303	2023	2280
1980	4047	2002	124	21	387	-	4558	2023	2535
1981	4288	2002	133	21	413	-	4834	2023	2811
1982	4539	2002	142	21	437	-	5118	2023	3095
1983	4797	2002	152	21	464	-	5413	2023	3390
1984	5069	2002	163	21	491	-	5723	2023	3700
1985	5362	2002	174	21	520	-	6056	2023	4033

[4820]

Sources: See respective Tables.

MINIMUM REQUIREMENTS WHICH COULD BE SUPPLIED BY THE POOL

Year	Megawatts								
	C.P.P.D. from Table I		Black Hills Power & Light from Table VIII		Kansas 4 Coops and Municipalities from Table IX		Summated Total		
	Firm load	Resources	Firm load	Resources	Firm load	Resources	Firm load	Resources	Deficiency
1970	553	426	63	21	201	73	817	520	297
1971	601	426	67	21	214	73	882	520	362
1972	653	426	72	21	229	73	954	520	434
1973	705	426	77	21	245	73	1027	520	507
1974	761	426	82	21	260	73	1103	520	583
1975	818	426	88	21	278	-	1184	447	737
1976	879	426	94	21	298	-	1271	447	824
1977	940	426	101	21	318	-	1359	447	912
1978	1006	426	108	21	341	-	1455	447	1008
1979	1071	426	116	21	363	-	1550	447	1103
1980	1140	426	124	21	387	-	1651	447	1204
1981	1214	426	133	21	413	-	1760	447	1313
1982	1293	426	142	21	437	-	1872	447	1425
1983	1374	426	152	21	464	-	1990	447	1543
1984	1463	426	163	21	491	-	2117	447	1670
1986	1558	426	174	21	520	-	2252	447	1805

Note. Except for retirement of 73 megawatts by the Kansas Co-operatives in 1975 (?) no allowance included for the other overage sets in Nebraska.

Source: See respective Tables.

TABLE XII

PROBABLE LOAD WHICH COULD BE SUPPLIED BY THE POOL.

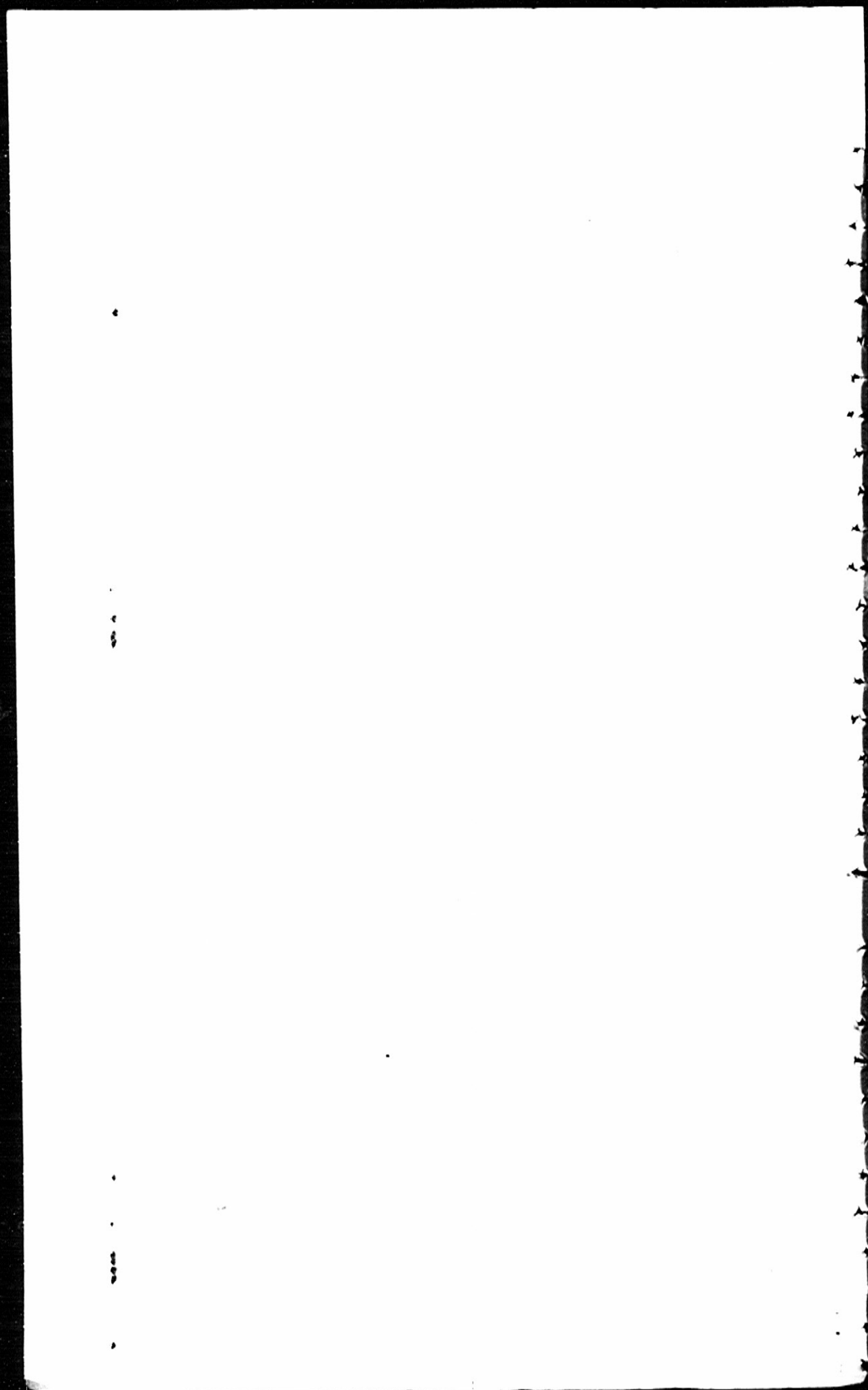
Year	Megawatts						
	Totals from Table XI		N.P.P.S. from Table III		Summated Total		
	Firm load	Resources	Firm load	Resources	Firm load	Resources	Deficiency to be Supplied
1970	817	520	491	393	1308	913	395
1971	882	520	519	393	1401	913	488
1972	954	520	548	393	1502	913	589
1973	1027	520	578	393	1605	913	692
1974	1103	520	610	393	1713	913	800
1975	1184	447	644	393	1828	840	988
1976	1271	447	679	393	1950	840	1110
1977	1359	447	716	393	2075	840	1235
1978	1455	447	755	393	2210	840	1370
1979	1550	447	796	393	2346	840	1506
1980	1651	447	840	393	2491	840	1651
1981	1760	447	886	393	2646	840	1806
1982	1872	447	935	393	2807	840	1967
1983	1990	447	986	393	2976	840	2136
1984	2117	447	1040	393	3157	840	2317
1985	2252	447	1097	393	3349	840	2509

[4822]

Note: Except for retirement of 73 megawatts by the Kansas Co-operatives in 1975 (?) no allowance included for the overage sets in Nebraska.

Source: See respective tables.

This table excludes other deficiencies in Western Nebraska, like Tri-State, G. & T. and all other deficiencies in Eastern Nebraska, like Omaha Public Power District.



[4823]

16. Q. Have any consumers within this market evidenced an intention to purchase power from Rocky Mountain Power Co.? A. Yes. As a result of negotiations with Consumers Public Power District, headquartered at Columbus, Nebraska, a Memorandum of Intentions has been entered into by and between Consumers Public Power District and Rocky Mountain Power Co. and its two affiliates hereinabove identified, under date of May 16, 1966, concerning the purchase and delivery of the power to be generated by these facilities; subject to the granting of this application. This Memorandum of Intentions is identified as Exhibit 100-4. In addition, the Applicant is in receipt of a letter dated May 18, 1966, from the Nebraska Electric Generation and Transmission Cooperatives, Inc. indicating its intention to negotiate a purchase of the power as soon as firm prices can be developed. This letter is included as Exhibit 100-04A.

17. Q. What arrangements, if any, have been made for financing the construction of the facilities proposed in Application No. 2289

[4824]

A. We have kept the firm of Kuhn, Loeb and Company, 30 Wall Street, New York City, advised from time to time of the progress being made in the development of this project, and in particular, progress made toward the marketing of the power to be generated.

This financial house has been supplied with a copy of the Memorandum of Intentions of May 16, 1966, between Consumers Public Power District of Nebraska and this Applicant and upon the basis of that information and other information supplied to them, has addressed a letter to Rocky Mountain Power Co. and its affiliates, supplementing its previous letter of January 27, 1966, identified as Exhibit 100-06, further describing the conditions under which the financing of the construction of the facilities described as Stages I and II are feasible and will be undertaken by them. This supplemental letter is dated May 18, 1966, and is identified as Exhibit 100-06A.

[4824-4826]

18. Q. What is the policy of the applicant with regard to granting public access to the project for recreational purposes? A. Applicant has been in frequent contact with the Colorado Fish and Game Commission and the Forest Service of the

[4825]

*TESTIMONY BEFORE THE FEDERAL
POWER COMMISSION*

PROJECT NO. 2289 - COLORADO
ROCKY MOUNTAIN POWER CO.

by

Jerome S. Katzin

1. Q. Please state your name and address. A. Jerome S. Katzin, 23 Wensley Drive, Great Neck, New York.

2. Q. What is your occupation? A. I am a general partner in the investment banking firm of Kuhn, Loeb & Co., 40 Wall Street, New York.

3. Q. What was your experience prior to joining Kuhn, Loeb & Co.? A. I was an attorney with the United States Securities and Exchange Commission from 1941 until I joined Kuhn, Loeb & Co. in 1953, except for an interlude in Military Service. While at the SEC, I served as Executive Assistant to the Chairman and also as Director of the Division of Public Utilities.

4. Q. As an investment banker, are you familiar with the financing of large hydroelectric power projects?

[4826]

A. Yes.

5. Q. What are your duties with Kuhn, Loeb & Co. insofar as they relate to the financing of such projects? A. On behalf of my firm, I investigate and analyze proposed financings by public agencies and by private corporations which Kuhn, Loeb & Co. may be interested in underwriting. Among other things, in preparing my analysis, I exa-

mine all available studies, reports and estimates by the issuer's engineers and other consultants, and I consider economic and legal aspects of the project and of its financing. If the issuer has developed a financial plan, I will study it to determine whether it is a sound undertaking for my firm. I will make my recommendations to my firm, which will then decide whether to proceed with the matter and to form a nationwide group of security dealers to underwrite and distribute the securities. If the financing contemplates a public sale, my firm will determine the price which it is prepared to bid on the basis of our studies of economic and financial feasibility of the project, the security provisions in the bond instruments, the prevailing market conditions, and other factors. If the financing contemplates a negotiated sale of bonds or other obligations, I will participate in the negotiation of the purchase contract and cooperate with

[4827]

the issuer and its consultants in the preparation of the bond indenture, the official statement, and related papers. On the basis of the factors mentioned above, we will then negotiate with the issuer for a price for the bonds which will assure the lowest interest cost under prevailing market conditions and a sound investment for the purchasers. Where the provisions of the Securities Act of 1933 apply, I will also be involved in preparation of the registration statement and prospectus.

6. Q. Please state briefly your firm's experience with respect to the financing of public projects, including hydro-electric power projects. A. Our firm is nearly 100 years old, and has been a major underwriter of securities of government agencies (both domestic and foreign), and of corporations and other bodies. In recent years, we have served as manager or co-manager of a number of major public power projects. These include \$335,000,000 Power Authority of the State of New York-St. Lawrence Project bonds, \$620,000,000 Power Authority of the State of New York-Niagara Project bonds, \$195,000,000 Grant County

[4827-4829]

*Public Utility District No. 2-Wanapum Development bonds.
We are financial advisor to the West

[4828]

Virginia Turnpike Commission and to the Washington Joint Transportation Commission.

7. Q. Have you examined the Amended Application for License No. 2289 filed with the Federal Power Commission by Rocky Mountain Power Co.? A. Yes.

8. Q. Have you examined any other material with respect to the proposed "Mountain-Midwest Power Pool"? A. Yes. Among other things, I have examined certain data and studies with respect to the development, including (a) application for the Sweetwater Hydroelectric Project (Volume I, November 30, 1964, and Volume II, December 31, 1964); (b) Oak Creek Thermal Electric Plan Report on Feasibility (December, 1964); and (c) East-West Transmission Line Feasibility Report (Two Volumes, December 1964). In addition, we have received a brochure describing the Power Pool and a "Memorandum of Intentions," dated May 16, 1966, covering a proposed power purchase agreement with Consumers Public Power District.

9. Q. Are you familiar with the proposed method of financing of Stages I and II of this project?

[4829]

A. Yes. The Sweetwater hydroelectric phase of Stages I and II, plus the Oak Creek thermal phase of Stages I and II and the transmission system, will require a total of approximately \$285,000,000. It is our understanding that the Applicant and representatives of the users of this power in Nebraska are in the process of organizing a non-profit corporation to be qualified to issue tax exempt revenue bonds, the proceeds of which are to be made available exclusively for the construction of the project. We are also advised that among the prospective users of the power in Nebraska is a group of rural electric cooperatives which, upon the finalizing of power purchase arrangements, will

apply to the Rural Electrification Administration for funds with which to build these portions of the transmission system which, together with existing transmission facilities, will serve them.

10. Q. On the basis of your experience as an investment banker in the field of revenue bond financing, please state some of the conditions for a successful marketing of these revenue bonds. A. Since the bondholders' only security for the bonds would be the revenue from the development, they must be assured of a predictable source of revenue adequate to pay all costs of operation and maintenance, to service the bonds, and to provide necessary

[4830]

reserves. For a successful financing, the following conditions must be met:

(1) The Company shall have good right and lawful authority to appropriate, store, and divert approximately 150,000 acre-feet per year of water from tributaries of the Colorado and White Rivers for the purpose of the Project and to construct, finance and operate the Project; and, if the Company is required to have a license, order or other authority with respect to the Project from any Federal, State or other governmental agency or regulatory body having lawful jurisdiction, such license, order or other authority will have been obtained; the water required for the construction and operating of the first stage of the Project has already been decreed;

(2) The Company shall have acquired all real property and interests necessary and sufficient for the construction and operation of the Project;

(3) The Project shall be demonstrated on the basis of independent engineering studies and surveys to be financially feasible and sound;

(4) The Consumers Public Power District and other financially qualified purchasers will have entered into contracts with the

[4831-4832]

[4831]

Company to take power from the Project (i) for a period of years at least equal to the term of the Company's obligations to be issued to finance the Project, and (ii) at rates which will produce revenues during such period at least sufficient to provide for operation and maintenance expenses, taxes (including applicable income taxes) payable on account of ownership and operation of the Project, renewals and replacements which may become necessary and which are not classifiable as maintenance expenses, and amortization of and interests on all obligations issued to finance the Project;

(5) The Company shall have entered into an indenture with a qualified corporate trustee containing such terms, conditions and covenants as the Bankers shall deem necessary or advisable for a successful financing of the Project;

(6) The Company shall have entered into a fixed price contract or unit price contract with a satisfactory guarantee against overruns for the construction of the Project by a reliable firm or group of contractors, including provision for an adequate completion bond;

[4832]

(7) There shall be no legal or economic impediments to the authorization, construction, or operation of the proposal;

(8) All agreements, studies, authorization, licenses and instruments will be in form satisfactory to counsel for the bankers and investors;

(9) The power to fix and revise power rates must be unrestricted and the authority to finance, construct, reconstruct and operate the development must be confirmed by competent legal counsel;

(10) Any taxation of properties and income by the various political units must not materially affect the cost of power from the development.

(11) The delivery of the bonds must be accompanied by an unqualified approving opinion as to their validity and

[4832-4833]

as to the exemption of income thereon from federal income taxes by a nationally recognized firm or firms of municipal bond attorneys;

(12) Any necessary REA commitment has been obtained for construction of the transmission lines.

These are major elements which my firm, as investment bankers, would look for in the financing of the development or any comparable public power financing.

[4833]

11. Q. Are you familiar with the proposed preliminary plan for financing the Sweetwater Hydroelectric Project as submitted in the studies previously referred to, an estimated \$44,904,000 attributable to the Sweetwater Hydroelectric Project? A. I am.

12. Q. Assuming that the conditions which you have just outlined are met at the time of sale of the bonds and that market conditions at the time of sale are not substantially different from present conditions, what is your opinion with respect to the marketability of \$44,904,000 revenue bonds to finance the Sweetwater Hydroelectric Project pursuant to the proposed preliminary financial plan? A. Assuming that the above-outlined conditions are met, it is my opinion that the bonds could be successfully marketed at a price which would be fair and reasonable to the issuer and the power users; and I am authorized by my firm to say that Kuhn, Loeb & Co. would be prepared to undertake the formation and management of a national group of underwriters and dealers of the standing and ability to buy and distribute all of the bonds which would be required to assure the completion of the development.

[4834]

[4834]

EXHIBIT 100-06

Project No. 2289

Rocky Mountain Power Co.

Witness: BRANNAN

*FORTY WALL STREET
NEW YORK, N.Y. 10005*

KUHN, LOEB & CO.

February 28, 1966

Rocky Mountain Power Co.
Oak Creek Power Co.
East-West Intertie, Inc.
c/o Charles F. Brannan
1575 Sherman Street
Denver, Colorado 80203

Gentlemen:

You have presented for our study a series of reports dealing with the proposed "Mountain - Midwest Power Pool" consisting of (a) application for the Sweetwater Hydroelectric Project (Volume I November 30, 1964 and Volume II December 31, 1964); (b) Oak Creek Thermal Electric Plant Report on Feasibility (December, 1964); and (c) East-West Transmission Line Feasibility Report (Two Volumes December 1964). In addition we have received a brochure describing the Power Pool, a draft of a proposed power purchase agreement with Consumers Public Power District with covering letter from Mr. D. W. Hill, general manager, and several other documents.

You have requested our advice on the requirements for assuring the financial feasibility of the Sweetwater Hydroelectric Project.

You have further advised us that the total invested capital required for the integrated pool is approximately \$186,235,000 of which \$44,904,000 is attributable to the Sweet-

[4834-4835]

water Hydroelectric Project. You advise us further that the projections are based upon REA financing at a 2% interest cost of 90% of the total cost of the transmission line of \$62,840,000, and that the balance of the funds required will be financed from conventional sources either by means of corporate obligations or through the instrumentality of a non-profit, non-stock corporation which would qualify under Section 103(a)1 of the Internal Revenue Code of 1954 to issue securities the interest on which would be exempt from federal income taxes.

[4835]

You have advised us that the Company is establishing its right to use approximately 150,000 acre feet per year of water from tributaries of the Colorado and White Rivers and is acquiring the necessary real property and interests within the State of Colorado for its Project, that the Company will construct high altitude dams in the vicinity of the South Fork of the White River and of Sweetwater Lake, Colorado, for the storage of such water and to construct facilities having an anticipated total installed capacity of for the first stage of the Project, 400,000 kilowatts of Hydro Peaking at Sweetwater and 600,000 kilowatts of Thermal Base Load at Oak Creek.

We can express no opinion as to the availability of REA funds for the transmission line, but the ability to finance the balance of the project on economic terms depends upon such financing being obtained.

In our opinion it will also be necessary for you to establish the following:

(1) The Company shall have good right and lawful authority to appropriate, store, and divert approximately 150,000 acre feet per year of water from tributaries of the Colorado and White Rivers for the purposes of the Project and to construct, finance and operate the Project, and if the Company is required to have a license, order or other authority with respect to the Project from any Federal, State

[4835-4836]

or other governmental agency or regulatory body having lawful jurisdiction, such license, order or other authority will have been obtained; the water required for the construction and operating of the first stage of the Project has already been decreed;

(2) The Company shall have acquired all real property and interests necessary and sufficient for the construction and operation of the Project;

(3) The Project shall be demonstrated on the basis of independent engineering studies and surveys to be financially feasible and sound;

[4836]

(4) The Consumers Public Power District and other financially qualified purchasers shall have entered into contracts with the Company to take power from the Project (i) for a period of years at least equal to the term of the Company's obligations to be issued to finance the Project, and (ii) at rates which will produce revenues during such period at least sufficient to provide for operation and maintenance expenses, taxes (including applicable income taxes) payable on account of ownership and operation of the Project, renewals and replacements which may become necessary and which are not classifiable as maintenance expenses, and amortization of and interest on all obligations issued to finance the Project;

(5) The Company shall have entered into an indenture with a qualified corporate trustee containing such terms, conditions and covenants as the Bankers shall deem necessary or advisable for a successful financing of the Project;

(6) The Company shall have entered into a fixed price contract or unit price contract with a satisfactory guarantee against overruns for the construction of the Project by a reliable firm or group of contractors, including provision for an adequate completion bond;

(7) There shall be no legal or economic impediments to the authorization, construction, or operation of the proposal;

(8) All agreements, studies, authorizations, licenses and instruments will be in form satisfactory to counsel for the bankers and investors.

In view of the present unsettled state of the bond market, the continuing rise in interest rates and a developing shortage of investment funds, it is not possible to state at this time the basis upon which this project would be financeable. Since it will be some months before this project is approved and ready for financing, we shall continue our studies and keep you advised of developments in this area.

Very truly yours,

Jerome S. Katzin

dm

[4837]

[4837]

EXHIBIT 100-06a

One Sheet Only

Project No. 2289

Rocky Mountain Power Co.

Witness: BRANNAN

*FORTY WALL STREET
NEW YORK, N.Y. 10005*

KUHN, LOEB & CO.

May 18, 1966

Rocky Mountain Power Co.
Oak Creek Power Co.
East-West Intertie, Inc.
1575 Sherman Street
Denver, Colorado 80203

Attention: Charles F. Brannan

Dear Mr. Brannan:

Since our letter to you of February 28, 1966, we have had occasion to study the project further and to see the "Memorandum of Intentions" executed by your group and the Consumers Power District. We understand also that there is a likelihood that the financing will be through means of a non-profit corporation through the issuance of securities exempt from Federal income tax.

It is our opinion that if all of the conditions set forth in our previous letter are met and a suitable tax-exempt issue were to be marketed at this time, the effective cost of money would be between 4 1/2 - 5%, well within the cost of capital projected in the engineering studies. Under such circumstances, it is our opinion that a financing would be feasible and this firm would be prepared to undertake the formation and management of a national group of underwriters and dealers of standing and ability to buy and distribute

all of the bonds which would be required to assure completion of the project.

Jerome S. Katzin

dm

[4844]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of)
) Project No. 2289
Rocky Mountain Power Co.)

**ANSWER TO THE
MOTION OF COMMISSION STAFF COUNSEL
TO DISMISS APPLICATION**

For its Answer to the Motion to Dismiss filed herein by the Commission Staff Counsel, the Applicant, Rocky Mountain Power Co., respectfully shows and affirms as follows:

1. Applicant acknowledges the receipt of the Commission's letter of February 2, 1961, referred to in said Motion, and states that immediately upon receipt of said letter, Applicant promptly undertook to comply with the request and requirements contained therein by (1) accelerating negotiations with the Public Service Company of Colorado concerning the purchase and sale of power; by (2) continuing negotiations with officials of Southern Natural Gas regarding financing of Applicant's proposed project; by (3) providing H. Zinder and Associates with all data pertaining to the project for their preparation of an independent report to Kuhn, Loeb & Co. for submission as Commission designated, Exhibit G; by (4) preparing tracing and one print each of six

[4844-4846]

drawings showing project boundaries and related information for submission as Commission designated, Exhibit K; by (5) preparing eight copies of a transmission line drawing showing the connection

[4845]

between the proposed Public Service Company line facilities and the Sweetwater substation (which line facilities the latter had advised it preferred to construct) for submission as Commission designated, Exhibit N; by (6) preparing and transmitting eight copies of a drawing showing geological investigations; (7) preparing and transmitting tracings and seven prints each of 31 drawings (L-1 through L-31).

2. Applicant acknowledges receipt of the Commission's letter of March 17, 1961, referred to in said Motion, and states that, upon receipt of said letter, the Applicant promptly undertook to comply with the requests and requirements set forth therein and made by staff during intervening discussions by (1) completing and forwarding reports of geological investigations; by (2) preparing and forwarding drawings and prepared detailed estimate of cost for submission as Commission designated, Exhibits J and L; by (3) preparing and forwarding revised Exhibit drawings L-1 through L-31; by (4) continuing discussions with Southern Natural Gas Company re financing; by (5) continuing negotiations with the Public Service Company of Colorado regarding the transmission network to connect with the Sweetwater Project, and for the sale and purchase of power and the evaluation of a report of this project by Ebasco; by (6) preparing and submitting data regarding the addition of Patterson and Dry Sweetwater Creeks to the project water supply; by (7) discussing partial financing of the project with potential R.E.A. users; by (8) studying the relocation of Sweetwater Forebay; by (9) up-dating estimates of

[4846]

overall cost of the project; by (10) negotiating with U.S. Bureau of Reclamation, Forest Service, U.S. Land Office

for rights of way and recreational features; by (11) corresponding and discussing with F.P.C. regional engineers at San Francisco, regarding load curves, and the anticipated demand on the Colorado River Storage Interconnected System.

3. Applicant acknowledges the receipt of the Commission's letter of March 30, 1962, and states that, promptly upon the receipt thereof, Applicant promptly undertook to fulfill requests and requirements contained therein by (1) preparing and forwarding amended application incorporating the newly developed pumped-storage feature; by (2) discussing the proposed pumped-storage design and revised costs with Public Service Company; by (3) preparing field reconnaissance and aerial surveys for powerhouse, penstock and forebay relocations; by (4) completing the design, drawings and preparation of detailed costs estimates for revised project and related studies required in connection with negotiations with other prospective power purchasers and interested government agencies; by (5) opening discussions with Colorado-Ute, Salt River Project for the sale of power.

4. Applicant acknowledges the receipt of the Commission's letters of May 31, 1962, and March 20, 1963, and states that promptly upon the receipt thereof, Applicant undertook to fulfill requests and requirements contained therein by amending its application to include completion of the surveys and design of the pumped storage features of the project as amended, preparation of a revised feasibility report, topography of Sweetwater Power Station, seismic

[4847]

survey of Sweetwater Powerhouse location to verify the rock formation, location of Sweetwater Penstocks with profile and cross-section, topography of forebay reservoir, topography of forebay damsite, location of pipeline from new east portal of Plateau Tunnel to forebay with profiles and cross-sections, geological studies of the revised location of Plateau Tunnel, geological studies of the forebay damsite, reservoir, Sweetwater Powerhouse, Sweetwater Reservoir,

[4847-4848]

the pipeline from new east portal of Plateau Tunnel to Sweetwater Forebay, location and design of access roads, vertical and horizontal control surveys for all features, design of Sweetwater Powerhouse, Penstocks and Forebay Dam, revised quantity estimates and cost estimates on all features, geological reports on all features, and new financial projections based on revised project.

This information and materials, incorporating the new pumped-storage features, was delivered to the Federal Power Commission on March 22, 1963, as Amended Exhibits G, H, I, J, O, L-10, L-15, L-17, L-18, L-19, L-20, L-21, M and N.

5. Applicant acknowledges the receipt of the Commission's letter of July 29, 1963, and states that, promptly upon the receipt thereof, the Applicant, undertook to fulfill the requests and requirements contained therein by preparing the revised design and drawings for the Plateau Tunnel, Sweetwater Forebay Tunnel, Cross Creek Tunnel, Forebay Dam control structures, penstock pipe, pumping powerplant, Meadows Dam Spillway, Sweetwater Dam, pressure conduit, Sweetwater Pumping Powerplant Switchyard,

[4848]

prepared specifications for contract negotiations, prepared revised Hydrology Report for pumped-storage. This and related material, including revisions of Exhibits J, K-1, L-10, L-11, L-15, L-19, L-20, L-21, and L-32, were forwarded to the Commission in December 1963.

6. Applicant acknowledges the receipt of the Commission's letter of March 19, 1964, and states that, promptly upon the receipt thereof, Applicant undertook to fulfill requests and requirements therein contained by (1) preparing estimates and feasibility report to present to various financial groups; by (2) restudying cost of a possible thermal plant to provide baseload to Nebraska and Kansas potential customers; by (3) preparing statement of cash requirements and annual income projections for Stage I and Stage II con-

struction for submission to financial groups; by (4) preparing preliminary proposals to be submitted to Nebraska Cooperatives for sale of Sweetwater power; by (5) meeting with representatives of the Rural Electrification Administration, Loup River Public Power District, Nebraska Electric Generation and Transmission Cooperative, all of Nebraska, the Municipal Power Association of Arizona, the Colorado River Basin Consumers Power Association, regarding sale and purchase of electric power, and the Bureau of Reclamation regarding wheeling problems.

7. Applicant refers to the portion of the Commission's order of August 19, 1965, indicating deficiencies "as to information regarding the financing of the project and *** availability of markets for electric power," and, in response thereto, directs

[4849]

the attention of the Commission to the material incorporated in the amended and resubmitted application filed May 23, 1966, pursuant to the Commission's order of April 29, 1966, in particular, to (a) Exhibit 100-04, Memorandum of Intentions by Consumers Public Power District and Rocky Mountain Power Co.; (b) Exhibit 100-04a, letter from Nebraska Electric Generation & Transmission Cooperative, Inc.; (c) Exhibit 100-06, letter from Kuhn, Loeb & Co., dated February 28, 1966; (d) Exhibit 100-06a, Supplemental letter from Kuhn, Loeb & Co., dated May 18, 1966; (e) Exhibit 100-14, Economic Analysis; and to the testimony describing and discussing these Exhibits, and respectfully submits that said Exhibits and the testimony relating thereto constitutes a sufficient preliminary showing of availability of markets for electric power and the contingent availability of funds to finance the project as and when licensed and when considered together with the extraordinary due diligence, high professional skill and substantial funds expended by the Applicant in the development of this Project and its unqualified dedication to public benefit and ownership re-

[4849-4850]

quires the Commission to overrule this and the other Motions to Dismiss.

That to supplement and elaborate upon the information, data and material constituting a part of this Application and to which specific mention has been made in this paragraph 7, Applicant attaches hereto a cost and revenue analysis of the proposed project based upon the completion of Stages I and II, consisting of a pro forma balance sheet, Projection of Bond Amortization

[4850]

and Project Surplus, and Projection of Amortization of Bonds, Exhibit A-1, and a statement of a tentative plan of financing, Exhibit A-2.

8. That the surveys, drawings, charts, tables and engineering data referred to in paragraphs 1 through 7 above have been filed with the Commission as indicated and are now a part of the Commission's records relating to Project No. 2289; and said documents are incorporated herein by reference.

9. Applicant submits: (1) that it has diligently endeavored to fulfill and comply with all of the requirements, rules and regulations of the Commission with as much speed and dispatch as all attending circumstances and the present size and magnitude of the project described in the Application now pending before this Commission will permit and, subject to the orders of the Commission, will continue to do so; (2) that the finalizing of arrangements for the financing of a project of this magnitude is inextricably bound to and conditioned upon the finalizing of contracts for the sale of its power and, thus, each is dependent of favorable action by this Commission; (3) that the evidence now before the Commission clearly shows that the Applicant is negotiating with the responsible representatives of power users of Nebraska and that there is reasonable likelihood that such a contract can and will be finalized as and when certain legal matters have been definitely concluded by the legislature

[4850-4851]

and courts of the State of Nebraska; (4) that the elapse of time between the initiating of Project No. 2289 and the present date has not inconvenienced any Intervenor in this

[4851]

proceeding; (5) that the inconvenience which may have been occasioned the staff of the Commission has been minimal and has not required of them extraordinary effort or time beyond or outside of their normal duties; (6) that equity as between the parties to this proceeding clearly demands that Applicant be afforded sufficient time to complete its negotiations for the sale of power and financing; (7) that the public interest likewise requires that the Applicant be afforded ample opportunity to complete this project.

WHEREFORE, Applicant prays that the Motion to Dismiss by the Commission Staff Counsel and all other similar Motions be denied.

Respectfully submitted,
ROCKY MOUNTAIN POWER
COMPANY

By /s/ Smith W. Brookhart
Smith W. Brookhart
Attorney for Applicant

Dated at Washington, D.C.
June 27, 1966

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing upon all the parties of record in this proceeding in accordance with the requirements of Section 1.17 of the Rules of Practice and Procedure.

Dated at Washington, D.C., this 27th day of June, 1966.

/s/ Smith W. Brookhart
Smith W. Brookhart
Attorney for Applicant

A NEBRASKA MUNICIPAL CORPORATION
(To Be Organized)

PRO-FORMA BALANCE SHEET
(Based Upon Completion of Stages I and II Only)
(In Thousands of Dollars)

	1970	1972/73	1973/74	1974/75
<u>ASSETS and OTHER DEBITS</u>				
Power Generating Facilities Constructed and/or Under Construction	\$ 98,000	\$178,951	\$218,416	\$265,500
Less: Reserve for Depreciation	-	1,790	5,764	10,602
	98,000	177,161	212,652	254,898
Deferred Debits Bond Underwriting Costs and Discounts	3,000	3,000	3,000	3,000
Cash and Investments	167,500	88,866	51,284	5,968
	<u>\$268,500</u>	<u>\$269,027</u>	<u>\$266,936</u>	<u>\$263,866</u>
<u>LIABILITIES</u>				
Bonds: (Exempt from Federal Income Tax to Holder Thereof) Note Below	\$268,500	\$268,340	\$268,170	\$268,000
Accumulated Net Revenues, Appropriated for Plant Additions and Bond Re- demptions	-	687	(1,234)	(4,134)
	<u>\$268,500</u>	<u>\$269,027</u>	<u>\$266,936</u>	<u>\$263,866</u>

NOTE: Plus additional bonds to be issued to
acquire the equity interests of Rocky
Mountain Power Co., Oak Creek
Power Company, and East-West
Intertie, Inc., as provided in the
agreement with Consumers Public
Power District dated May 16, 1966.

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MOUNTAIN-MIDWEST POWER POOL
 PROJECTION OF BOND AMORTIZATION AND PROJECT SURPLUS
 (Based on Completion of Stages I and II Only.)
 In Thousands of Dollars

YEAR	AMORTIZATION				SURPLUS, ACCUMULATIVE (CASH)
	Payment	Interest	Principal	Balance	
1st Half 1970	\$ 6,891	\$ 5,735	\$1,156	\$264,347	\$ (453)
1970/1971	13,783	11,419	2,364	261,983	(496)
1971/1972	13,783	11,316	2,467	259,516	336
1972/1973	13,783	11,209	2,574	256,942	2,703
1973/1974	13,783	11,096	2,687	254,255	4,536
1974/1975	13,783	10,978	2,805	251,450	6,354
1975/1976	13,783	10,856	2,927	248,523	8,122
1976/1977	13,783	10,723	3,055	245,468	9,890
1977/1978	13,783	10,595	3,183	242,280	11,658
1978/1979	13,783	10,455	3,323	238,952	13,426
1979/1980	13,783	10,310	3,473	235,479	15,194
1980/1981	13,783	10,150	3,625	231,854	16,962
1981/1982	13,783	10,000	3,783	228,071	18,730
1982/1983	13,783	9,835	3,948	224,123	20,493
1983/1984	13,783	9,662	4,121	220,002	22,266
1984/1985	13,783	9,482	4,301	215,701	24,034
1985/1986	13,783	9,294	4,489	211,212	25,802
1986/1987	13,783	9,098	4,685	206,527	27,570
1987/1988	13,783	8,893	4,890	201,637	29,333
1988/1989	13,783	8,679	5,104	196,533	31,106
1989/1990	13,783	8,455	5,328	191,205	32,874
1990/1991	13,783	8,224	5,559	185,646	34,642
1991/1992	13,783	7,981	5,802	179,844	36,410
1992/1993	13,783	7,726	6,057	173,787	38,178
1993/1994	13,783	7,461	6,322	167,465	39,946
1994/1995	13,783	7,185	6,598	160,867	41,714
1995/1996	13,783	6,896	6,887	153,980	43,482
1996/1997	13,783	6,594	7,189	146,791	45,250
1997/1998	13,783	6,279	7,504	139,287	47,013
1998/1999	13,783	5,951	7,832	131,455	48,786
1999/2000	13,783	5,608	8,175	123,280	50,554
2000/2001	13,783	5,250	8,533	114,747	52,322
2001/2002	13,783	4,876	8,907	105,840	54,090
2002/2003	13,783	4,487	9,296	96,544	55,858
2003/2004	13,783	4,079	9,704	86,840	57,626
2004/2005	10,612	3,654	6,958	79,882	62,565
2005/2006	7,471	3,354	4,117	75,765	70,645
2006/2007	7,471	3,131	4,290	71,475	78,725
2007/2008	7,471	3,001	4,470	67,005	86,805
2008/2009	7,471	2,813	4,653	62,347	94,885
2009/2010	7,471	2,613	4,853	57,494	102,965
2010/2011	7,471	2,415	5,056	52,438	111,045
2011/2012	7,471	2,202	5,269	47,169	119,125
2012/2013	7,471	2,006	5,375	41,794	127,205
2013/2014	7,471	1,800	5,601	36,193	135,285
2014/2015	7,471	1,635	5,836	30,357	143,365
2015/2016	7,471	1,339	6,082	24,275	151,445
2016/2017	7,471	1,134	6,337	17,938	159,525
2017/2018	7,471	867	6,604	11,334	167,605
2018/2019	7,471	590	6,881	4,453	175,685
2019/2020	4,753	300	4,453	-	186,403

[4853]

JA 433(ii)

Note: Surplus Accumulation is in accordance with the surplus reflected in Page 3 of Exhibit 100-14, "Economic Analysis."

MOUNTAIN-MIDWEST POWER POOL
PROJECTION OF AMORTIZATION OF BONDS
(Based on Completion of Stages I and II Only.)
In Thousands of Dollars

YEAR	COMBINED		50-YEAR, 4% BONDS				50-YEAR, 4-1/2% BONDS				35-YEAR, 4-1/2% BONDS			
	Payment	Balance	Pmt.	Int.	Princ.	Balance	Pmt.	Int.	Princ.	Balance	Pmt.	Int.	Princ.	Balance
1970 - BONDS SOLD -		\$265,503				\$95,612				\$59,682				\$110,209
1st Half 1970	\$ 6,591	\$264,347	\$2,225	\$1,912	\$ 313	\$95,295	\$1,510	\$1,343	\$ 167	\$59,515	\$3,156	\$2,450	\$ 676	\$109,533
1970/1971	13,703	261,903	4,451	3,012	639	94,660	3,020	2,673	342	59,173	6,312	4,929	1,333	108,150
1971/1972	13,703	258,516	4,451	3,706	665	93,995	3,020	2,663	357	58,816	6,312	4,867	1,445	106,705
1972/1973	13,703	256,942	4,451	3,760	691	93,304	3,020	2,647	373	58,443	6,312	4,802	1,510	105,195
1973/1974	13,703	254,255	4,451	3,732	719	92,505	3,020	2,630	390	58,053	6,312	4,734	1,578	103,617
1974/1975	13,703	251,450	4,451	3,703	748	91,037	3,020	2,612	408	57,645	6,312	4,663	1,649	101,963
1975/1976	13,703	248,523	4,451	3,673	770	91,059	3,020	2,594	426	57,219	6,312	4,589	1,723	100,245
1976/1977	13,703	245,466	4,451	3,642	809	90,250	3,020	2,575	445	56,774	6,312	4,511	1,801	98,444
1977/1978	13,703	242,230	4,451	3,610	841	89,409	3,020	2,555	465	56,309	6,312	4,430	1,882	96,562
1978/1979	13,703	238,952	4,451	3,576	875	88,534	3,020	2,534	486	55,823	6,312	4,345	1,967	94,595
1979/1980	13,703	235,479	4,451	3,541	910	87,624	3,020	2,512	508	55,315	6,312	4,257	2,055	92,540
1980/1981	13,703	231,854	4,451	3,505	946	86,673	3,020	2,489	531	54,784	6,312	4,164	2,148	90,392
1981/1982	13,703	228,071	4,451	3,467	984	85,694	3,020	2,465	555	54,229	6,312	4,068	2,244	88,140
1982/1983	13,703	224,123	4,451	3,428	1,023	84,671	3,020	2,440	580	53,649	6,312	3,967	2,345	85,803
1983/1984	13,703	220,002	4,451	3,387	1,064	83,607	3,020	2,414	606	53,043	6,312	3,861	2,451	83,352
1984/1985	13,703	215,701	4,451	3,344	1,107	82,500	3,020	2,387	633	52,410	6,312	3,751	2,561	80,791
1985/1986	13,703	211,212	4,451	3,300	1,151	81,349	3,020	2,359	662	51,748	6,312	3,636	2,676	78,115
1986/1987	13,703	206,527	4,451	3,254	1,197	80,152	3,020	2,329	691	51,057	6,312	3,515	2,797	75,313
1987/1988	13,703	201,637	4,451	3,206	1,245	78,907	3,020	2,298	722	50,335	6,312	3,389	2,923	72,395
1988/1989	13,703	196,533	4,451	3,156	1,295	77,612	3,020	2,265	755	49,560	6,312	3,256	3,054	69,341
1989/1990	13,703	191,205	4,451	3,104	1,347	76,265	3,020	2,231	789	48,791	6,312	3,120	3,192	66,149
1990/1991	13,703	185,646	4,451	3,051	1,400	74,865	3,020	2,196	824	47,947	6,312	2,977	3,335	62,814
1991/1992	13,703	179,844	4,451	2,995	1,456	73,409	3,020	2,159	861	47,106	6,312	2,827	3,485	59,329
1992/1993	13,703	173,787	4,451	2,936	1,515	71,894	3,020	2,120	900	46,206	6,312	2,670	3,642	55,687
1993/1994	13,703	167,465	4,451	2,876	1,575	70,319	3,020	2,079	941	45,265	6,312	2,506	3,806	51,881
1994/1995	13,703	160,867	4,451	2,813	1,638	68,681	3,020	2,037	983	44,282	6,312	2,335	3,977	47,904
1995/1996	13,703	153,930	4,451	2,747	1,704	66,977	3,020	1,993	1,027	43,255	6,312	2,156	4,156	43,740
1996/1997	\$13,703	\$146,791	\$4,451	\$2,679	\$1,772	\$65,205	\$3,020	\$1,946	\$1,074	\$42,101	\$6,312	\$1,969	\$4,343	\$39,405
1997/1998	13,703	139,237	4,451	2,603	1,843	63,362	3,020	1,899	1,122	41,053	6,312	1,773	4,539	34,866
1998/1999	13,703	131,455	4,451	2,534	1,917	61,445	3,020	1,846	1,172	39,887	6,312	1,569	4,743	30,123
1999/2000	13,703	123,230	4,451	2,458	1,993	59,452	3,020	1,795	1,225	38,662	6,312	1,355	4,957	25,166
2000/2001	13,703	114,747	4,451	2,376	2,073	57,379	3,020	1,740	1,280	37,332	6,312	1,132	5,180	19,906
2001/2002	13,703	105,840	4,451	2,295	2,156	55,223	3,020	1,682	1,338	36,044	6,312	899	5,413	14,573
2002/2003	13,703	96,544	4,451	2,209	2,242	52,901	3,020	1,622	1,398	34,646	6,312	656	5,656	8,917
2003/2004	13,703	86,840	4,451	2,119	2,332	50,449	3,020	1,559	1,461	33,185	6,312	401	5,911	3,006
2004/2005	10,612	79,882	4,451	2,026	2,425	48,224	3,020	1,493	1,527	31,650	3,141	135	3,006	-
2005/2006	7,471	75,765	4,451	1,929	2,522	45,702	3,020	1,425	1,595	30,063	-	-	-	-
2006/2007	7,471	71,475	4,451	1,823	2,623	43,079	3,020	1,353	1,667	28,396	-	-	-	-
2007/2008	7,471	67,005	4,451	1,723	2,720	40,351	3,020	1,273	1,742	26,654	-	-	-	-
2008/2009	7,471	62,347	4,451	1,614	2,837	37,514	3,020	1,190	1,821	24,833	-	-	-	-
2009/2010	7,471	57,494	4,451	1,501	2,950	34,564	3,020	1,117	1,903	22,930	-	-	-	-
2010/2011	7,471	52,438	4,451	1,383	3,060	31,496	3,020	1,032	1,988	20,942	-	-	-	-
2011/2012	7,471	47,169	4,451	1,260	3,191	28,305	3,020	942	2,078	18,864	-	-	-	-
2012/2013	7,471	41,794	4,451	1,247	3,204	25,101	3,020	849	2,171	16,693	-	-	-	-
2013/2014	7,471	36,193	4,451	1,119	3,332	21,769	3,020	751	2,269	14,424	-	-	-	-
2014/2015	7,471	30,357	4,451	906	3,465	18,304	3,020	649	2,371	12,053	-	-	-	-
2015/2016	7,471	24,275	4,451	647	3,604	14,700	3,020	542	2,478	9,575	-	-	-	-
2016/2017	7,471	17,938	4,451	703	3,740	10,952	3,020	431	2,589	6,906	-	-	-	-
2017/2018	7,471	11,344	4,451	553	3,890	7,054	3,020	314	2,706	4,200	-	-	-	-
2018/2019	7,471	4,453	4,451	397	4,054	3,000	3,020	193	2,827	1,453	-	-	-	-
2019/2020	4,753	-	3,235	235	3,000	-	1,510	65	1,453	-	-	-	-	-

[4855]

[4855]

Exhibit A-2
Applicant's Answer
to Motion to Dismiss

TENTATIVE PLAN OF FINANCING

(1) Organize a non-profit corporation under the laws of Nebraska in cooperation with officials of Consumers Public Power District and other participating power consumers.

(2) Qualify this Nebraska entity to issue tax-exempt bonds in the amount of \$265,503,000 plus financing costs for Stages I and II only of the project.

(3) Implement offer of Kuhn, Loeb & Co. to form a national group of underwriters and dealers to buy and distribute these bonds.

(4) The Nebraska corporation will contract for the construction of the plants by Rocky Mountain Power Co. and Oak Creek Power Company and the transmission lines by East-West Intertie, Inc., and will advance the money to each for this construction.

(5) The security for the repayment of the bonds under these contracts to be the income derived from the sale of power and also the facilities constructed by Rocky Mountain Power Company, Oak Creek Power Company, and East-West Intertie, Inc.

(6) Primary control and responsibility for operation of the project to rest with the Nebraska entity or its designee.

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[4863]

[4863]

CONSUMERS PUBLIC POWER DISTRICT

GENERAL OFFICE

Columbus, Nebraska

November 3, 1966

Federal Power Commission
Washington, D.C. 20426

Subject: Rocky Mountain Power Company
Project No. 2289

Gentlemen:

Consumers Public Power District is a public corporation and political subdivision of the State of Nebraska supplying electricity in or to more than 350 municipalities in Nebraska. In order to supply the expanding needs of its customers, Consumers is seeking additional supplies of electric power and energy and has consulted with Rocky Mountain Power Company about the possibility of purchasing electric power and energy from that company.

Consumers is also presently investigating the feasibility of a large nuclear powered generating plant and is preparing for a merger with another public power district in Nebraska engaged in generation, transmission and sale of electric power and energy. We feel that Consumers may desire to contract to purchase a part of the output of the proposed project of Rocky Mountain Power Company, but we are not in a position to enter into any contracts therefor at this time.

Under these conditions, we respectfully request that if the needs and desires of Consumers Public Power District to purchase a part of the output of this project are to be considered as a part of the hearing on this project, that the hearing should continue to be deferred so as to permit the following to be accomplished:

[4863-4864]

1. The completion of studies which are under way to confirm the extent to which pumped storage facilities complement and benefit the nuclear facility proposed by Consumers.

2. The preparation and filing of applications by Rocky Mountain Power Company for the transmission lines proposed to interconnect their project with facilities in Nebraska.

[4864]

3. The completion of investigations being made by Consumers and Rocky Mountain Power Company for the possible supply of spinning or other system reserve requirement.

4. The consideration of changes in resource and load data needed to reflect the merger in which Consumers is involved.

The continued deferment of this hearing is necessary if the foregoing are to be completed and presented.

Respectfully submitted,

Consumers Public Power District

By /s/ D. W. Hill.

General Manager

[4869]

BEFORE THE
FEDERAL POWER COMMISSION

Rocky Mountain Power Co.)

)

Project No. 2289

NOTICE OF INTERVENTION

TO THE SECRETARY OF THE FEDERAL POWER
COMMISSION:

You are hereby notified that the Nebraska Power Review Board, an agency of the State of Nebraska created by and deriving its jurisdiction under the laws of the State of Nebraska, intends to intervene in the above-captioned matter, pursuant to Section 1.8 of the Commission's Rules of Practice and Procedure, on behalf of all electric rate payers in the State of Nebraska.

NEBRASKA POWER REVIEW BOARD

By /s/ Delbert E. Dirrim

Examining Attorney

VERIFICATION

STATE OF NEBRASKA)

) ss.

COUNTY OF LANCASTER)

Delbert E. Dirrim, being first duly sworn, deposes

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and says that he is the Attorney for the Nebraska Power Review Board, an agency of the State of Nebraska; that he has read the foregoing Notice of Intervention; and that he is authorized to file the same with the Federal Power Commission.

/s/ Delbert E. Dirrim

Examining Attorney

[4870-4871]

Subscribed and sworn to before me this 2nd day of November, 1966.

My Commission expires May 27, 1972.

/s/ Mallin Bauer

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Notice of Intervention on behalf of all electric rate payers in the State of Nebraska upon all parties of record in accordance with the requirements of Section 1.7 of the Commission's Rules of Practice and Procedure.

Dated this 17th day of November, 1966, at Lincoln, Nebraska.

/s/ Delbert E. Dirrim

Examining Attorney

[4871]

BEFORE THE FEDERAL POWER COMMISSION

Rocky Mountain Power Co.)

)

Project No. 2289

MEMORANDUM IN SUPPORT OF NOTICE OF INTERVENTION

In support of its notice of intervention out of time, the Nebraska Power Review Board states and shows as follows:

A. This petition is filed pursuant to the provisions of Section 308 (a) of the Federal Power Act (49 Stat. 858; 16 U.S.C. 825g) and under Sections 1.8 and 1.37 (f) of the Commission's Rules of Practice and Procedure.

B. The Nebraska Power Review Board is a public agency created by act of the Legislature of the State of Nebraska as defined by the Federal Power Act, 16 U.S.C.A., Section 796 (15).

C. Communications with regard to this petition should be addressed to: Delbert E. Dirrim, Examining Attorney, Nebraska Power Review Board, P. O. Box 94607, Lincoln, Nebraska 68509.

D. The Nebraska Power Review Board has jurisdiction over all power suppliers within the State of Nebraska, both wholesale and retail, and is vitally interested in any possible source of electrical power and energy to meet the

[4872]

electrical load growth within the State of Nebraska.

E. The demand for power by electrical users in the State of Nebraska—municipal, domestic, farm, and industrial—has sharply increased and now exceeds earlier projected increases and is substantially greater than the national average increase in demand for electric power. Hence, the Nebraska Power Review Board, on behalf of the power suppliers and users within the State of Nebraska, is vitally interested in exploring any and all sources of low-cost dependable electrical power for distribution and use by the electrical customers within the State of Nebraska in the immediate future and for years ahead.

F. The Nebraska Power Review Board has the responsibility and obligation as a public agency of the State of Nebraska to take all proper and reasonable steps to assure a dependable and adequate supply of electrical power and energy for the public power suppliers and their customers within the State and believes that the facilities described in this application are a source from which a significant proportion of the growing electrical requirements of the electric rate payers within the State of Nebraska may be dependably satisfied at reasonable and economic rates.

G. This agency is informed that one Nebraska Power supplier, namely the Consumers Public Power District, and the applicant, the Rocky Mountain Power Company, have had certain preliminary negotiations, meetings, and conferences concerning the use of power to be generated by the

[4872-4874]

facilities described in Rocky Mountain Power Company's application for license and amendments thereto, designated as Project No. 2289. The Nebraska Power Re-

[4873]

view Board is familiar with License Application No. 2289 and believes that this facility might make available to Nebraska users a low-cost source of dependable electricity and might possibly provide a source of backup power and energy complementing a nuclear facility in Nebraska which said Consumers Public Power District is now studying.

By letter dated June 28, 1966, the Federal Power Commission was advised of the interest of the Nebraska Power Review Board in a full exploration of the possibilities of a Nebraska interconnection with the source proposed to be provided by Rocky Mountain Power Company. The subject letter was acknowledged as a matter of public interest, but separate from the record material on which the Commission can rely in reaching its decision.

All of the factors bearing upon and leading to the consummation of a final agreement between said Consumers Public Power District or others and Rocky Mountain Power Company for the purchase and sale of electrical power are not within the control of said Consumers Public Power District or interested power suppliers in the State of Nebraska nor this agency, but are dependent in part upon possible actions of the courts of Nebraska and the State Legislature of Nebraska. Said factors have not yet been fully resolved but there continues to appear reasonable likelihood that said Consumers Public Power District and possibly other public power suppliers in Nebraska in concert with the Consumers Public Power District may be in a position in the foreseeable future to consummate a firm and

[4874]

long-term agreement with Rocky Mountain Power Company which will be in the best interests of the users of electric

power and energy in Nebraska, as well as to those public power suppliers and distributors over which this agency has jurisdiction, to consummate a firm arrangement or contract for the delivery of power from the facilities described in the above-identified application.

H. The Nebraska Power Review Board represents that it is a regulatory agency created by and deriving its jurisdiction from the laws of the State of Nebraska and that as such, has a bona fide interest in the outcome of the above-entitled application of the Rocky Mountain Power Company now pending before this Commission.

I. The Nebraska Power Review Board further asserts that its notice of intervention is presented for the purpose of discharging its responsibilities to all electric rate payers in the State of Nebraska and in performing the duties and obligations resting upon it by virtue of the laws of Nebraska and not for the purpose of delay.

WHEREFORE, THE NEBRASKA POWER REVIEW BOARD prays that the Commission accept its notice of intervention as a party and permit the Nebraska Power Review Board to participate fully in any further proceedings had upon Project No. 2289.

Respectfully submitted,
STATE OF NEBRASKA - NE-
BRASKA POWER REVIEW
BOARD

By /s/ Delbert E. Dirrim
Examining Attorney

[4875]

[4875]

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

William H. Norton, being first duly sworn, deposes and says that he is Chairman of the Nebraska Power Review Board; that he has read the foregoing Memorandum in Support of Notice of Intervention Out of Time on behalf of the electric rate payers in the State of Nebraska; that the statements therein are true and correct to the best of his knowledge and belief; and that he is authorized to file the same with the Federal Power Commission.

/s/ William H. Norton
Chairman, State of Nebraska -
Nebraska Power Review Board

Subscribed and sworn to before me this 2nd day of November, 1966.

My commission expires November 27, 1969.

/s/ Delbert E. Dirrim
Notary Public

[4885]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Lee C. White, Chairman; L. J.
O'Connor, Jr., Charles R. Ross,
Carl E. Bagge, and John A.
Carver, Jr.

Rocky Mountain Power Company) Project No. 2289

OPINION NO. 514

OPINION AND ORDER GRANTING MOTION
TO DISMISS APPLICATION FOR LICENSE

(Issued February 16, 1967)

O'CONNOR, Commissioner:

Rocky Mountain Power Company filed an application for license for a hydroelectric project on January 5, 1961. As supplemented, amended and revised, the application now embraces a pump storage development with an estimated total ultimate capacity of over two million kilowatts. Power for off-peak pumping will be provided by steam generation operated by an affiliated company. Both project and steam generating plant would be located in Colorado; power would be transmitted to Nebraska and neighboring states by a third affiliated corporation.

On February 2, 1961, the Commission notified applicant that it had not made a sufficient showing of a market for the power and of applicant's ability to finance the project and requested that such information be supplied. Commission letters dated March 17, 1961, March 30, 1962, March 20, 1963, July 29, 1963, March 19, 1964 and June 23, 1964, reiterated the request for satisfactory information. In the August 19, 1965, Order Fixing Hearing the Commission stated that, "the application is still insufficient regard-

[4885-4886]

ing information as to financing of the project and as to information on availability of markets for electric power” Paragraph (B) (2) of the order provided “the applicant’s filing [of its case on hearing] shall include a full and complete statement of a definite plan for the financing of the project and a full and complete statement of definite plans for the marketing of the electric power Failure to comply with this directive will constitute a basis for a motion to dismiss the application for lack of completeness.”

[4886]

After the applicant presented its case, intervenor Public Service Company of Colorado and the Commission staff moved to dismiss the application on the ground that applicant had failed to produce any definite plan for financing the project or marketing its power as required by the Commission order. The motion to dismiss was joined in by the Public Utilities Commission of Colorado, the Colorado Game, Fish and Parks Commission, the Colorado Wildlife Federation, Colorado River Conservation District, Western Colorado Power Company and the Utah Power & Light Company. On June 20, 1966, the Presiding Examiner referred to the Commission the motion to dismiss the application. Oral argument on the motion has been requested by the applicant.

On November 24, 1966, after the time provided by Section 1.8(d) of the Commission’s Rules of Practice and Procedures, the Nebraska Power Review Board filed a Notice of Intervention. The Board did not request that the hearing be reopened so that it might submit evidence, nor did it request that the course of the proceedings be altered in any manner because of its intervention. It asked only that it be allowed “to participate fully in any further proceedings.” On December 13, 1966, the Colorado River Water Conservation District filed a pleading in opposition to the Board’s Notice of Intervention.

Section 1.8(d) of the Commission’s Rules of Practice and Procedure permits late filings “in extraordinary circumstan-

ces for good cause shown." Whether the Board's filing be considered a Notice of Intervention or simply a Petition to Intervene, it is obvious that it has an interest in this proceeding. Although the Board does not have general rate jurisdiction,¹ it is charged with looking into the present and prospective needs of supply in which a large part of the proposed project's power would be marketed. Moreover, its Chairman has been a witness in this proceeding. We see no reason, therefore, to deny it standing and will permit the intervention.

The only question for the Commission to decide is whether applicant has introduced sufficient evidence of a market for the power and of feasible financing for the project. (Applicant did object to the motion by intervenor, Public Service Company of Colorado, on the ground that this intervenor did not have standing to make such a motion, but there is no question of the standing of the Commission staff to do so.)

¹See Section 70-1017 of the Nebraska Revised Statutes. The Board does have limited jurisdiction "... if the supplier and the applicant cannot agree to any of the terms under which [electric] service is to be furnished, or if the supplier is not treating all customers and applicants fairly and without discrimination. . ."

[4887]

The Market for the Power

The project is to be part of a power pool which will develop 900 megawatts, peaking, in the first stage (300 from the project), 1300 in the second stage (400 from the project) and 2800 in the third stage (1000 from the project).

The applicant has no firm contracts, and has not shown prospects for any except in Nebraska with Consumers Public Power District (Consumers). A "Memorandum of Intentions" between Consumers, applicant, and applicant's affiliated companies recites Consumers' intention to purchase 100 to 150 megawatts above present requirements in 1970.

[4887-4888]

It does not say the purchase will be from the applicant. It further provides that there is no legal commitment between the parties until they have "negotiated definite contracts."

It does not appear that applicant could furnish power to Consumer by 1970, even assuming it now had a license for the project. Applicant originally hoped to be ready with 300 megawatts of steam generation and 200 megawatts of project power by 1970, with another 300 megawatts of steam generation by 1971 (Exhibits 9, 14). This was dependent, however, on construction being started in 1966. It is doubtful whether construction could be commenced before the spring of 1968 in view of the necessity for completing this proceeding, obtaining the necessary financing, and attending to all the other details which must precede construction. Even this date assumes that the applicant could remedy the deficiencies in his application. Repeated requests that he do this during the last five years have only resulted in pleas for more time. Consumer will have to fill its 1970 deficiency from some other source. This would indicate that even the potential 100-150 megawatts sale to Consumers in 1970 will be lost to applicant.

In Colorado, negotiations for sale of power have been fruitless, and no power will be sold there so far as appears from the record. Elsewhere, aside from Consumers, there is no indication of any interest save one letter from a Nebraska cooperative, saying, "If and when you could develop firm prices for the power and energy we would give consideration to firm purchases." The letter indicates the load deficiency of the cooperative in 1971 as 65,000 kilowatts. (Ex. 100-04a)

This letter, and the Consumers Memorandum of Intentions, is all that applicant's President cited in answer to a question as to whether consumers

[4888]

in the area had evidenced an intention to purchase power from the applicant (Brannan, p. 12). He stated that a press

release by the Department of the Interior, dated July 8, 1964, and the Annual Report of the Nebraska Power Review Board "indicated an urgent demand for additional supplies of power for users in Nebraska" (Brannan, p. 10). He added (p. 11) that power is being offered to users in Kansas and South Dakota, and may be available east of the Missouri. Nothing is said as to the reception given the offers.

There is testimony by an official of Consumers and by the Chairman of the Nebraska Power Review Board that Nebraska utilities will experience power deficiencies in the years ahead. These increase to 1979. They "will have to be met either by purchasing the requirements from [the pool of which applicant is a part] or be met from other sources. . ." (Schaufelberger, p. 5). There are "appreciable deficiencies" in South Dakota, Wyoming and Kansas "which could be met by the power produced by the . . . pool" (Schaufelberger, p. 6).

As the project power would not be available for several years, Nebraska utilities would be compelled to arrange for power from other sources for the near future. The extent to which these new sources will cut into the potential market for the project power in later years is not clearly indicated in this record.

The applicant's presentation has centered principally upon Nebraska. Therefore we feel it incumbent upon us to bear in mind the present and potential needs and supplies of power in Nebraska in disposing of this application. The Commission has been aware of the power situation in Nebraska for some time. The staff's report on the Nebraska Power interruption of July 11, 1966, recommended an upgrading in Nebraska's generating capacity and the strengthening of its interties. The petition of the Nebraska Power Review Board to intervene in this proceeding has served to underscore our concern for the future power supply in Nebraska, and we note that the Nebraska utilities are already

[4888-4889]

planning their load supplies for 1970 and later.¹ However, despite repeated requests,

¹There is now pending before the Review Board an application for construction of a 200 mw coal fired steam-electric generating station at Grand Island and a 345 kv line from Grand Island to the Omaha area. If it is approved, it could be available in time to help carry the 1970 load. Consumers Public Power District and Iowa Power and Light Company have under consideration the construction of a 400 to 800 mw nuclear steam-electric station on the Missouri River to assist in meeting loads by 1971 or 1972. Various proposals for the construction of extra high voltage transmission lines are also under consideration which would strengthen transmission networks within Nebraska and with nearby power sources. For example, efforts are underway to secure rights of way for a

(Cont'd on next page)

[4889]

there has been no showing of a market for this power in Nebraska or elsewhere. We believe it would serve no purpose to prolong this proceeding further. Should a market eventually be found for the power the applicant proposes to make available, no action which we are taking today would prevent the filing of a new application supported by new evidence.

Financing

It is proposed to finance the project by means of a bond issue. The only evidence of feasibility was a letter from Kuhn, Loeb and Company and the testimony of one of Kuhn, Loeb's partners. These indicated that financing by tax-exempt bond issue (of a non-profit organization to finance the project) would be feasible at a cost of 4½ percent to 5 percent provided certain conditions were met. Among the conditions is the following: "The Consumers Public Power District and other financially qualified purchasers shall have entered into contracts with the Company to take power from the Project (i) for a period of years at least equal to the term of the Company's obligations to be issued

to finance the Project and (ii) at rates which will produce revenues during such period at least sufficient to provide for operation and maintenance expenses and replacement * * * and amortization of and interest on all obligations issued to finance the Project."

As has been said, Consumers has not entered into a contract with the Company to take power from the project, and its prospective purchase in 1970 of 100 to 150 megawatts will have to be from other sources. No other purchasers have entered into contracts with the applicant, and applicant has made no showing that they will do so. We do not require firm contracts before licensing hydroelectric projects if other evidence

¹(Cont'd)

345-kv line to permit U.S. Bureau of Reclamation power to be brought into Nebraska.

The Omaha Public Power District plans for 1970 and later include a 500 mw nuclear generating unit near Fort Calhoun and the construction of a 345 kv line between Omaha and Sioux City. This is a section of the planned twin cities, Sioux City, Omaha, Kansas City 345 kv line. Although no additional generating capacity is expected to be constructed in the Western Nebraska System through 1970, a 230 kv line from Stegall to North Platte under suitable arrangements could strengthen Nebraska ties with the U.S. Bureau of Reclamation's system.

Where these sources, if eventually developed, will need to be supplemented by other sources is not decisive in disposing of this application. They do indicate, however, that the Nebraska utilities are actively planning for their future load demands.

[4890]

sufficiently shows ability to finance the project, as well as the marketability of the power. *Public Utility District No. 1 of Skamania County, Washington*, 32 FPC 444, 447. In this case, however, the evidence is that the project would be financed upon certain conditions, and one of those conditions was that there be firm contracts for sale of the power. There are no such contracts.

The evidence upon which the applicant relies is before the Commission, and legal arguments have been presented by both sides. The Administrative Procedure Act, Section 7(c), provides that a proponent of a rule or order has the burden of proof and this rule has been applied in numerous instances where an applicant for a license or some other privilege has failed to make out a case. See, e.g., *Colorado Arizona-California Express, Inc. v. U.S.*, 224 F. Supp. 894 (D-Colo., 1963); *Great Northern Ry. Co. v. U.S.*, 209 F. Supp. 230 (D-Minn., 1962). Cf. *Courier Post Publishing Co. v. F.C.C.*, 104 F. 2d 213 (U.S. App DC 1939). This Commission has held many times that an applicant has the burden of presenting adequate evidence in supporting its application. See e.g., *Amerada Petroleum Co.*, 29 FPC 171 (1963); *Union Texas Petroleum Co.*, 29 FPC 273 (1963); *H. L. Hunt*, 28 FPC 897 (1962) (reversed on other grounds sub. nom., *Margaret Hunt Hill, Trustee v. F.P.C.*, 335 F. 2d 355 (CA5, 1964)).

The recently decided case of *Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 F. 2d 608 (CA2, 1965), does not detract from the logic of requiring an applicant for license to support adequately its application on the points involved in the motions to dismiss. The court in *Scenic Hudson* saw this Commission as a guardian or conservator of the public domain, charged with the affirmative duty of assuring that the public, the "third party in these proceedings," be represented and protected in compliance with the standards of Section 10(a) of the Act. Although nothing was added to this Commission's authority or responsibility by *Scenic Hudson*, its role as guardian of the public domain was highlighted. See *First Iowa Coop. v. F.P.C.*, 328 U.S. 152; and *F.P.C. v. Idaho Power Co.*, 344 U.S. 17. Where the applicant has shown that its proposed project can and will operate economically as a power project, the Commission nevertheless has the affirmative duty to act only if the record is adequate to make a reasoned decision on whether the proposed project is or can be conditioned to be one which will be "best adapted to a com-

prehensive plan" for developing the waterway involved not only for power purposes but also for other public purposes, such as navigation, flood control, irrigation, wildlife, conservation and recreation, as required by Section 10(a) of the Act. But until the applicant has made a reasonable showing that it could accomplish its power objectives, it seems useless to proceed.

[4891]

We disagree with the dissent that the public interest would be served by proceeding further with this case. The problem with which the court was concerned in *Scenic Hudson* was whether to issue a license for a project without adequately considering alternatives to the development proposed. Here, however, the Commission is refusing to go forward in a formal hearing on a license application since the applicant, despite repeated requests, has not shown that it has a reasonable chance of marketing the power and financing the project. Thus, on the facts alone *Scenic Hudson* is distinguishable from the instant case. More important, however, than the different factual situation under which *Scenic Hudson* arose, is the effect its application in this proceeding would have on the administrative process. We are faced with a case where the applicant has failed to make even a threshold showing that the project would be in the public interest. *Scenic Hudson*, under the circumstances of this case, does not require the Commission to assume the applicant's burden of proof.

We are of the opinion that applicant has not made a sufficient showing either of financial feasibility or of a market for the power. The motion to dismiss the application should therefore be granted. This dismissal is without prejudice to any later application which may be made supported by a sufficient showing of financial feasibility and a market for the power.

Oral argument would not remedy the lack of evidence in the record. Under the circumstances, we think the request for such argument should be denied.

The Commission finds:

(1) Intervention by the Nebraska Power Review Board should be permitted.

(2) The evidence submitted by applicant in support of the availability of a market for the power proposed to be produced by Project No. 2289, and the evidence of ability to finance the project, is inadequate to support the application.

The Commission orders:

(A) The request of applicant for oral argument on the motion to dismiss is denied.

(B) Intervention of the Nebraska Power Review Board is hereby granted.

[4892]

(C) The motion to dismiss applicant's application for license for Project No. 2289 is granted.

By the Commission. Commissioner Ross dissenting
(SEAL) filed a separate statement
appended hereto.

Joseph H. Gutride,
Secretary.

[4893]

Rocky Mountain Power Company) Project No. 2289

(Issued February 16, 1967)

ROSS, Commissioner, *dissenting*:

The question raised in this matter is whether the Commission should dismiss an application for a hydroelectric license under Section 10(a) of the Federal Power Act before all the evidence has been submitted. Here, the majority is dismissing an application for a license for a hydroelectric project. It does so before all the evidence has been submit-

ted which precludes an evaluation of the merits of the proposed project. The majority bases its action principally on the inability of the applicant to interest utilities serving the areas to purchase the output of the proposed project. This approach represents a narrow and restrictive interpretation of our responsibilities to which I cannot subscribe.

First, as a practical matter, I do not believe that the Commission's time would be wasted were we to allow the record to be fully developed. It is true that this Commission has no authority to force utilities to purchase the energy produced by a hydroelectric project. It is also true that this Commission should not license a project where there is no prospect for the utilization of the power to be produced. Nevertheless, the public at large has a right to know whether the utilities are being arbitrary in refusing to agree to purchase power the project would generate. To the extent alternative sources of power would be more costly, the public should be apprised of any reasons which might justify the disinterest of the neighboring utilities in the project. The public will only come to know the facts if this Commission satisfies the duty it has to present them. In this connection, the Commission often has knowledge not generally available to private parties. For example, data on the costs are within our particular expertise. Such evidence must be adequately developed. Only in this way will the general public be in a position to make an informed judgment respecting the performance of the utilities serving them.

[4894]

If it ultimately developed that the refusal to purchase by the utilities was unreasonable, and the Commission disclosed this fact, the public at large would then be in a position to make a judgment and to make that judgment known. And let no one underestimate the influence of the public in such matters. If, on the other hand, the refusal were justified, the proposed project would receive at least a decent burial. The public then would not have nagging doubts that the

[4894-4895]

Commission had been gulled and left a valuable site undeveloped for unexplained reasons.

As a legal matter, this Commission has been entrusted with the duty of representing the public in these kinds of cases. In quoting Section 10(a) of the Act in *Scenic Hudson*, the court declared: "Congress gave the Federal Power Commission sweeping authority and a specific planning responsibility." (354 F.2d 608, p. 613; see also p. 620-21.) "If the Commission is properly to discharge its duty in this regard, the record on which it bases its determination must be complete. The petitioners and the public at large have a right to demand this completeness." (*Scenic Hudson*, *supra*, p. 612; see also p. 621).

The Commission's responsibilities under Section 10(a) are closely related to its duties under Section 202(a). Under these sections, the Commission is obliged to consider the proper utilization and conservation of natural resources for the purpose of assuring an abundant supply of energy with the greatest possible economy, and to promote the voluntary interconnection and coordination of facilities for the generation, transmission and sale of energy.

Peremptory dismissal of the application forecloses any consideration of our duties under these sections. The record is incomplete. Again the court in *Scenic Hudson*, quoted from Judge Frank's decision in *Isbrandtsen Co. v. U.S.*:¹

¹96 F. Supp. 883, 892 (S.D.N.Y. 1951, affirmed by an equally divided court, 342 U.S. 950 (1952))

[4895]

This is a somewhat surprising contention, to be contrasted with the following views of Commissioner Aitchison of the Interstate Commerce Commission concerning the obligations of administrative agencies: "... The agency does not do its duty when it merely decides upon a poor or nonrepresentative record. As the sole representative of the public, which is a third party in these proceedings, the agency owes

the duty to investigate all the pertinent facts, and to see that they are adduced when the parties have not put them in The agency must always act upon the record made, and if that is not sufficient, it should see the record is supplemented before it acts. It must always preserve the elements of fair play, but it is not fair play for it to create an injustice, instead of remedying one, by omitting to inform itself and by acting ignorantly when intelligent action is possible'

This Commission, as trustees of the public at large, is abandoning this licensing proceeding to the possible whims of certain parties. The majority is forsaking its broad planning responsibilities in favor of a "piecemeal, restrictive, negative approach of the River and Harbor Acts and other laws previously enacted" - an approach condemned in the *Scenic Hudson*, *supra*, and *First Iowa* cases.² Further, the majority forgets the memorandum of the Solicitor General to the Supreme Court: "It [the FPC] is well aware moreover, that the ultimate responsibility rests with it and that only its positive efforts will assure optimum development of the nation's waterways."

Such a restrictive approach is illustrated by the majority's interpretation of *Scenic Hudson*. In its view, the Commission's independent responsibility for assuring comprehensive development under Section 10(a) of the Act

²*First Iowa Hydro-Electric Coop. v. F.P.C.*, 328 U.S. 152 (1946)

[4896]

comes into play only after the applicant has established that "the proposed project can and will operate economically as a power project . . ." It adds: "Until the applicant has made a reasonable showing that it could accomplish its power objectives, it seems useless to proceed." In essence, the majority is saying that the Commission is concerned and exercises its independent responsibilities under Section 10(a) in areas such as navigation, flood control, irrigation, wild-

[4896-4897]

life, conservation and recreation, but is not concerned with economic power supply - that is the applicant's job. Of course, this is untrue. *Scenic Hudson* involved more than scenery. Essentially, the Court told the Commission that it must insure that a complete record be made on alternative power sources.

Moreover, the Commission's concern with "assuring an abundant supply of electric energy throughout the United States with the greatest possible economy"³ is reflected in several of its actions. The National Power Survey is a good example. Perhaps closer to the point, the Commission regularly analyzes and makes suggestions regarding power generation to the Corps of Engineers and to the Congress regarding projects proposed by the Corps. In several cases, the Commission has proposed modifications to the Corps' plans which would permit the inclusion of hydroelectric power generation on an economic basis. In other cases, the Commission suggests changes in the nature of the Corps' proposed power project which would make it more economic. Do we have a responsibility to exercise our independent expertise regarding power generation for federal projects but not for those proposed by private parties? And do we have a different responsibility for reporting the results of our studies to the general public as compared to the Congress? I think not.

³Section 202(a) of the Federal Power Act.

[4897]

For these reasons, I dissent to the order dismissing the proceeding. While I sympathize with the impatience of the majority with this particular applicant, I strongly believe that this Commission's concern extends far beyond the interests of any applicant to the public at large, and that our responsibilities should be faced squarely irrespective of this applicant's delinquencies.⁴ In my opinion, the case should proceed by providing that all interested parties, including

[4897-4898]

Staff, adduce evidence and submit proposed findings respecting all relevant features of the proposed project.

/s/ Charles R. Ross

Charles R. Ross
Commissioner

⁴Significantly, this applicant has nevertheless expended considerable sums of money, approximately \$1,500,000, and has adduced substantial evidence of a technical and economic nature in support of its application.

[4898]

CONSUMERS PUBLIC POWER DISTRICT

March 7, 1967

Federal Power Commission
Washington, D. C. 20426

Gentlemen:

Subject: Rocky Mountain Power Company,
Project No. 2289.

It is our understanding that the Rocky Mountain Power Company will request the Federal Power Commission to re-examine its Project No. 2289, in order to supply you with updated information.

This letter is to advise you that negotiations are still in progress between Consumers Public Power District and the Rocky Mountain Power Company for the possible purchase of some power from this project. Final results will be delayed until we have completed several studies which are now under way.

Yours very truly,

Don E. Schaufelberger,
Operations Director

fk

Cc. R. D. Wilson
D. W. Hill

Charles F. Brannan
William H. Norton

[4899-4900]

[4899]

[Received Mar 13 8 43 AM :67 Federal Power Commission]

DEPARTMENT OF WATER RESOURCES
STATE OF NEBRASKA

LINCOLN 68509

March 10, 1967

Mr. J. H. Gutride, Secretary
Federal Power Commission
Washington, D.C. 20426

Re: Rocky Mountain Power Company's Application,
Project No. 2289

Dear Mr. Gutride:

Enclosed are an original and ten copies of a Motion for
Reconsideration filed in the above captioned matter.

Yours very truly,
NEBRASKA POWER REVIEW BOARD

By /s/ Delbert E. Dirrim
Examining Attorney

DED:jmb

Enclosures

[4900]

BEFORE THE
FEDERAL POWER COMMISSION

Rocky Mountain Power Company) Project No. 2289

MOTION FOR RECONSIDERATION

COMES NOW the Nebraska Power Review Board, an
agency of the State of Nebraska, Intervenor herein, and res-

pectfully urges the Commission to reconsider its order entered in Opinion No. 514, dismissing the application entitled Project No. 2289, and in support of such motion respectfully shows the Commission as follows:

1. That all records, reports, studies, and data available to this agency indicate that Nebraska will be faced with a serious electrical deficiency commencing with the summer of 1967 and that this deficiency will exist for a number of years despite proposed generation facilities within the state.

2. There is currently pending in the Legislature of the State of Nebraska a bill which would make mandatory the wheeling of power over the transmission facilities owned by any Nebraska supplier for the benefit of any other Nebraska public power supplier. This bill, if enacted by the Legislature and upheld by the Nebraska courts, would make feasible the importation of desperately needed low-cost power from such facilities

[4901]

that are the subject matter of Project No. 2289 by numerous Nebraska power suppliers for the benefit of their electrical customers. This agency respectfully directs the Commission's attention to Section 9 and 10 of Legislative Bill 620 and to Legislative Bill 319 which are now pending before the Nebraska Legislature and copies of which are attached to and made a part of this motion.

3. This agency has been informed that negotiations are still continuing and are being conducted earnestly and in good faith between the Consumers Public Power District and the Rocky Mountain Power Company which could result in the consummation of a contract for the purchase of electrical power and energy from the Rocky Mountain Project.

4. This agency urges the Federal Power Commission that although its order of dismissal, contained in Opinion No. 514, does not preclude Rocky Mountain Power Company from making a later application with the Federal Power

[4901-4902]

Commission, such dismissal creates a negative atmosphere in regard to further negotiations between Rocky Mountain, Consumers, and other Nebraska power suppliers.

5. By letter dated June 28, 1966, the Federal Power Commission was advised of the interest of the Nebraska Power Review Board in a full exploration of the possibilities of a Nebraska interconnection with the source proposed to be provided by the Rocky Mountain Power Company, which letter was acknowledged as a matter of public interest but separate from the record material

[4902]

from which the Commission can rely in making its decision pursuant to Section 1.4 (d) of the Commission's Rules of Practice and Procedure. This agency, in support of this motion to reconsider, respectfully incorporates by reference its letter of June 28, 1966, as well as all previous filings made herein.

WHEREFORE, Movant respectfully requests that this honorable Commission reconsider its order of dismissal entered in Opinion No. 514 and to keep said application open in order that applicant might present further evidence of whatsoever nature deemed necessary or appropriate by the Commission and to permit applicant an opportunity to continue its negotiations with the Consumers Public Power District and other Nebraska suppliers toward the possible contracting for the sale of electricity from the proposed project.

Respectfully submitted,
STATE OF NEBRASKA -
NEBRASKA POWER REVIEW
BOARD

By /s/ Delbert E. Dirrim
Examining Attorney

VERIFICATION

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

Delbert E. Dirrim, being first duly sworn, deposes and says that he is the Attorney for the Nebraska Power Review Board, an agency of the State of Nebraska; that he has prepared the foregoing Motion for Reconsideration; that the allegations contained therein are true as he verily believes;

[4903]

and that he is authorized to file the same with the Federal Power Commission.

/s/ Delbert E. Dirrim

Examining Attorney

Subscribed and sworn to before me this 10th day of March, 1967.

My commission expires May 27, 1972.

/s/ Morris Bauer

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Motion for Reconsideration on behalf of all electric rate payers in the State of Nebraska upon all parties of record in accordance with the requirements of Section 1.7 of the Commission's Rules of Practice and Procedure.

Dated this 10th day of March, 1967, at Lincoln, Nebraska.

/s/ Delbert E. Dirrim

Examining Attorney

LEGISLATURE OF NEBRASKA

SEVENTY-SEVENTH SESSION

Legislative Bill 319

Introduced by Harold B. Stryker, 23rd District; Elmer Wallwey,
17th District; Rudolf C. Kokes, 41st District;
Terry Carpenter, 48th District; C. F. Moulton,
8th District; Arnold Ruhnke, 31st District

Read first time January 18, 1967

Referred to Committee on Public Works

Sent to printer January 20, 1967

A BILL

FOR AN ACT to amend section 70-626.01, Reissue Revised Statutes of Nebraska, 1943, relating to public power; to declare policy; to require the sale and wheeling of electrical energy as prescribed; to provide procedures; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section. 1. It is declared to be the policy of the
 2 State of Nebraska that electric transmission facilities
 3 and interconnections which are defined as being electric
 4 lines having a rating of thirty four thousand five hun-
 5 dred volts and higher will be provided and make available
 6 to all power agencies so as to result in the lowest pos-
 7 sible cost for the transmission and delivery of electric
 8 energy over the transmission and interconnected facili-
 9 ties of any public power district, public power and ir-
 10 rigation district, municipality, governmental subdivi-
 11 sion, or nonprofit electric cooperative corporation.

Sec. 2. That section 70-626.01, Reissue Revised
 2 Statutes of Nebraska, 1943, be amended to read as follows:
 3 70-626.01. A public power district or public
 4 power and irrigation district which is engaged in the
 5 generation and transmission of electrical energy shall
 6 be required to sell electrical energy at wholesale di-
 7 rectly to any municipality ~~or~~, other public power or
 8 public power and irrigation district, political subdivi-
 9 sion in the state which is engaged in the distribution
 10 and sale of electrical energy, or any nonprofit electric
 11 cooperative corporation, all of which are hereinafter
 12 referred to in this act by the term power agency, when
 13 such ~~municipality or political subdivision~~ power agency
 14 makes application for the purchase of electrical energy,
 15 provided if such district has the requested amount of
 16 electrical energy available for sale, and the ~~muni-~~
 17 ~~city or political subdivision~~ power agency agrees to
 18 make or pay for the necessary physical connection with
 19 the electrical facilities of such district.

Sec. 3. A public power district or public power
 2 and irrigation district which is engaged in the genera-
 3 tion and transmission of electric energy shall, upon re-
 4 quest, establish a physical connection of its transmission

5 lines and associated facilities with the facilities of
 6 any power agency, subject to the payment of the costs of
 7 the necessary physical connection, and shall make avail-
 8 able for utilization at reasonable charges by such power
 9 agency any surplus capacity of such transmission lines
 10 and associated facilities in excess of the capacity needed
 11 by the public power district or public power and irriga-
 12 tion district engaged in the generation and transmission
 13 of electric energy to fulfill its then existing contrac-
 14 tual commitments, to or for the account of any such other
 15 power agency without regard to the source or destination
 16 of such electric power and energy.

Sec. 4. If any public power district or public
 2 power and irrigation district engaged in the generation
 3 and transmission of electric energy refuses to provide
 4 such transmission facility, or is unable to do so for
 5 any reason, or if it has insufficient transmission ca-
 6 pacity, and fails to offer to provide additional trans-
 7 mission capacity at a reasonable cost within sixty days
 8 after requested to agree so in writing, then the power
 9 agency or agencies requesting such service, either indi-
 10 vidually or collectively, through their nominee or agent,
 11 shall have the right to provide the necessary facilities
 12 after approval by the Nebraska Power Review Board for
 13 wheeling of electrical energy, which facility so provided
 14 shall then be physically connected to the facilities of
 15 the wholesale generation and transmission district for de-
 16 livery of power to the requesting power agencies, regard-
 17 less of the source of such power, and upon payment of the
 18 cost of the physical connection of such facility. Electri-
 19 cal energy shall be transmitted and delivered over the
 20 electric facilities of the wholesale generation and trans-
 21 mission district only upon payment of rates, tolls, and
 22 charges that are reasonable, fair, and nondiscriminatory.

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[4907]

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Sec. 5. Transmission facilities owned by any power
2 agency shall also be available for transmitting or deliver-
3 ing electric energy to any other public power district or
4 public power and irrigation district, or power agency, when
5 there is sufficient capacity to transmit and deliver elec-
6 tric energy requested. If the agency requested to furnish
7 such transmission capacity is unable to do so or fails to
8 offer to do so at a reasonable cost within sixty days af-
9 ter requested to agree so in writing, then the agency re-
10 questing such service shall have the right to provide the
11 necessary facilities, upon approval by the Nebraska Power
12 Review Board for the wheeling of electrical energy and
13 which facilities shall be physically connected to the
14 facilities of the agency requested to furnish wheeling
15 capacity on payment of the cost of physical connection of
16 said facilities. Electrical energy shall be transmitted
17 and delivered over the electric transmission facilities
18 provided by any agency subject to the terms of this act
19 only upon payment of rates, tolls, and charges that are
20 reasonable, fair, and nondiscriminatory.

Sec. 6. In the event of any disagreement between
2 power agencies, whether wholesale or retail, regarding the
3 provisions of this act and compliance therewith, either
4 party may make application to the Nebraska Power Review
5 Board for settlement of the disagreement. The Nebraska
6 Power Review Board shall, upon application by any such
7 power agency and after notice to the parties and hearing,
8 enter a decision with regard to the disagreement, taking
9 into consideration whether the relief requested by the
10 complaining party is necessary or appropriate in the pub-
11 lic interest and will place no undue burden upon the par-
12 ties affected thereby, and it shall enter such order upon
13 any and all other matters as may be appropriate in connec-
14 tion with said controversy.

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Sec. 7. That original section 70-626.01, Reissue
2 Revised Statutes of Nebraska, 1943, is repealed.

[4907-4908]

LEGISLATURE OF NEBRASKA

SEVENTY-SEVENTH SESSION

Legislative Bill 620

Introduced by Harold B. Stryker, 23rd District; Arnold Ruhnke,
31st District; C. F. Moulton, 8th District;
Elmer Wallwey, 17th District; Maurice A. Kremer,
34th District; Terry Carpenter, 48th District;
John E. Knight, 26th District; George H. Fleming,
47th District

Read first time January 30, 1967

Referred to Committee on Public Works

Sent to printer February 1, 1967

A BILL

FOR AN ACT relating to public power; to declare policy; to
define terms; to provide for management and con-
trol of certain public power districts and public
power and irrigation districts by a common board
of directors, as prescribed; to provide for wheel-
ing of power; and to provide procedures.

Be it enacted by the people of the State of Nebraska,

Section 1. It is declared to be the policy of the
 2 State of Nebraska that where two or more power districts
 3 jointly operate properties in more than twenty counties
 4 and pay their electric revenue into a joint fund, those
 5 districts should have a single board of directors so as
 6 to eliminate conflicts, duplication, and deadlocks between
 7 the two or more boards of directors which are harmful to
 8 public power in Nebraska.

9 It is further declared to be the policy of the
 10 state that the directors of public power districts and
 11 public power and irrigation districts shall be elected
 12 by the electors who are the ultimate consumers of the
 13 electric energy produced or transmitted under the con-
 14 trol of such directors.

15 It is further declared to be the policy of the
 16 state that all electric generation and transmission fa-
 17 cilities shall be available for the use and transmission
 18 of power for all such power districts, nonprofit coopera-
 19 tives, and municipalities at rates and charges that are
 20 fair, reasonable and nondiscriminatory.

Sec. 2. As used in this act, unless the context
 2 otherwise requires:

3 (1) Power agency shall mean all public power dis-
 4 tricts and public power and irrigation districts organized
 5 under the provisions of Chapter 70, article 6, Reissue
 6 Revised Statutes of Nebraska, 1943, municipalities and
 7 nonprofit electric cooperatives;

8 (2) Power district shall mean public power dis-
 9 tricts and public power and irrigation districts;

10 (3) Transmission lines shall mean any lines for
 11 the transmission of electric energy with a rating of
 12 thirty-four thousand five hundred volts or more;

13 (4) Sale at wholesale shall mean the sale of elec-
 14 tric energy to a power agency which uses such electric

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15 energy for distribution to ultimate consumers or to an-
16 other power agency which distributes to ultimate consumers;

17 (5) Wholesale district shall mean any power dis-
18 trict which engages in sales at wholesale; and

19 (6) Facilities shall mean generating plants and
20 transmission lines.

Sec. 3. When two or more power districts jointly
2 operate facilities in more than twenty counties and pay
3 their electric revenue into a joint fund, such power dis-
4 tricts shall, after July 1, 1968, be managed and controlled
5 by a board of directors to be selected as provided in this
6 act.

Sec. 4. The board of directors established under
2 the provisions of this act shall be vested with the same
3 power and authority over the power districts subject to
4 this act and shall be subject to the same limitations as
5 boards of directors of power districts under the provi-
6 sions of Chapter 70, article 6, Reissue Revised Statutes
7 of Nebraska, 1943. The vesting of such management and
8 control under a single board of directors shall not af-
9 fect the ownership of any facility or property of any of
10 the individual power districts whose management and con-
11 trol is assumed, but such facilities and property shall
12 remain the facilities of the power district subject to
13 the provisions of this act.

Sec. 5. The board of directors established under
2 the provisions of this act to govern such power districts
3 shall assume and carry out all the contracts, agreements,
4 indentures, and obligations of every kind and nature of
5 the power districts whose management and control they
6 assume, including specifically all of the obligations to
7 the holders of the bonds of the power districts whose
8 management and control they assume, with the same rights
9 with reference to such contracts and obligations as would

10 have been within the power of the boards of directors of
11 the original power districts whose management and control
12 is hereby transferred.

Sec. 6. The board of directors shall continue to
2 maintain separate books and records for each of the power
3 districts whose management and control it assumes and
4 shall maintain such records and accounts subject to and
5 in compliance with all provisions of the respective bond
6 issues and shall account for revenue and disbursements as
7 provided in such bonds and indentures.

Sec. 7. The board of directors assuming management
2 and control of the power districts subject to this act
3 shall continue to operate the properties of the power
4 districts in an efficient and economical manner subject
5 to the conditions of the outstanding bonds and their re-
6 spective indentures.

Sec. 8. For the purposes of appointment, nomina-
2 tion, and election of directors, the areas of service of
3 the power districts subject to the provisions of this act
4 shall be divided into nine subdivisions. The area of
5 service of a power district subject to this act, shall be
6 defined as any area in which retail service is rendered
7 directly by a power district subject to the provisions of
8 this act and the area in which retail service is rendered
9 by a power agency which purchases at wholesale fifty per
10 cent or more of its total electric energy requirements
11 directly or indirectly through an intervening power agency,
12 from a power district subject to the provisions of this
13 act. All precincts in which fifty per cent or more of
14 the residents receive electric service from the power
15 districts subject to the provisions of this act, either
16 directly or indirectly through a power agency, shall be
17 included in a subdivision.

18 Within sixty days after the effective date of this

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19 act the power districts subject to the provisions of this
20 act shall certify to the Director of Water Resources the
21 areas so served. All power agencies serving ultimate con-
22 sumers which purchase fifty per cent or more of their
23 total electric energy requirements at wholesale from any
24 wholesale supplier to which the electric energy was sold
25 by a power district subject to the provisions of this act,
26 shall also file in the same manner within sixty days from
27 the effective date of this act, statements of all cities,
28 counties, or precincts served at retail.

29 Within sixty days thereafter the director shall
30 determine the areas of service of the power districts
31 subject to the provisions of this act, and shall deter-
32 mine and establish nine subdivisions each of which shall
33 comprise an approximate equal number of electors and
34 shall certify such subdivisions and their boundaries to
35 the Governor for the purpose of appointing the directors.
36 Each director so appointed must be a resident of the sub-
37 division from which appointed.

38 If power districts shall fail to file the certi-
39 ficates of their areas of service, the director may deter-
40 mine such areas of service from any information available
41 including filings previously made by such power districts
42 with the Secretary of State.

43 In the event of a substantial change in the number
44 of electors of any of the subdivisions, the director may,
45 upon application of an elector or electors who are affected
46 by alleged unequal representation, require a redistricting
47 of subdivisions from which the directors are elected in
48 order that all subdivisions shall have an approximately
49 equal number of electors based upon the vote for Governor
50 at the last preceding election.

51 Within sixty days from such certification of areas,
52 the Governor shall appoint a board of directors consisting

53 of nine members, one from each of such subdivisions, each
54 of whom shall be a qualified elector in the subdivision
55 from which appointed. Such directors shall be appointed
56 for staggered terms of six, four, and two years respec-
57 tively so that one-third of the total directors will be
58 elected at each successive election subsequent to their
59 original appointment.

60 On the expiration of their original terms of ap-
61 pointment, the members of the board of directors shall
62 be elected from their respective subdivisions for a term
63 of six years, and such directors shall be nominated and
64 elected in the same general manner, as nearly as may be,
65 as members of the Legislature and shall serve under the
66 same conditions and limitations and shall have the same
67 power and authority as directors of public power districts
68 and public power and irrigation districts as provided in
69 Chapter 70, article 6, Reissue Revised Statutes of Ne-
70 braska, 1943.

Sec. 9. The board of directors established under
2 the provisions of this act shall, upon request, establish
3 or permit the establishment of a physical connection of
4 the transmission lines and associated facilities of any
5 power district whose management and control they have
6 assumed under the provisions of this act with the trans-
7 mission lines and associated facilities of any power
8 agency and shall make available for utilization at reason-
9 able charges to such requesting power agencies any sur-
10 plus capacity of such transmission lines and associated
11 facilities in excess of the capacity needed for the trans-
12 mission of power and energy to fulfill its customers'
13 needs and its then existing contractual commitments, for
14 the transmission and delivery of electric power and energy
15 to or for the account of such power agency without regard
16 to the source or destination of such electric power and

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17 energy.

18 If the power districts subject to the provisions
19 of this act have insufficient transmission capacity and
20 fail within a period of sixty days after such request to
21 agree to provide such additional transmission capacity,
22 then the power agency or agencies requesting such service,
23 either individually or collectively or through their
24 nominee or agent, may, upon approval of the proper state
25 authority, provide such facilities, and such facilities
26 so provided shall be physically connected to the facili-
27 ties of the power districts subject to the provisions of
28 this act for the delivery of power and energy regardless
29 of the source or destination of such power upon the pay-
30 ment by the requesting power agencies of the cost of the
31 physical connection of such facilities. Electric energy
32 shall be transmitted and delivered over the electric
33 facilities of the power districts subject to the pro-
34 visions of this act or over lines of their customers or
35 over facilities provided by the power agency requesting
36 such wheeling service only upon payment of rates, tolls,
37 and charges for the use of such transmission lines and
38 facilities that are fair, reasonable and nondiscriminatory.

Sec. 10. Any public agency so interconnecting with
2 the facilities of districts under the provisions of sec-
3 tion 9 of this act shall coordinate the operation of its
4 facilities with operations of the districts subject to
5 the provisions of this act so as to obtain the lowest
6 power cost for reliable electric service to the people
7 of Nebraska.

Sec. 11. The board of directors appointed by the
2 Governor to manage and control the power districts subject
3 to the provisions of this act shall file an amendment to
4 the petition for the creation of the power districts with
5 the Director of Water Resources so as to provide for the

6 election of the board of directors from the subdivisions
7 created by the provisions of this act within three months
8 from assuming management and control. Upon qualification
9 of the directors appointed by the Governor as provided in
10 section 8 of this act, the terms of existing directors of
11 the power districts subject to the provisions of this act
12 shall terminate.

Sec. 12. An appeal may be taken from any final
2 ruling or order of the Director of Water Resources under
3 any provisions of this act directly to the Supreme Court
4 in the manner provided in section 46-210, Revised Stat-
5 utes Supplement, 1965.

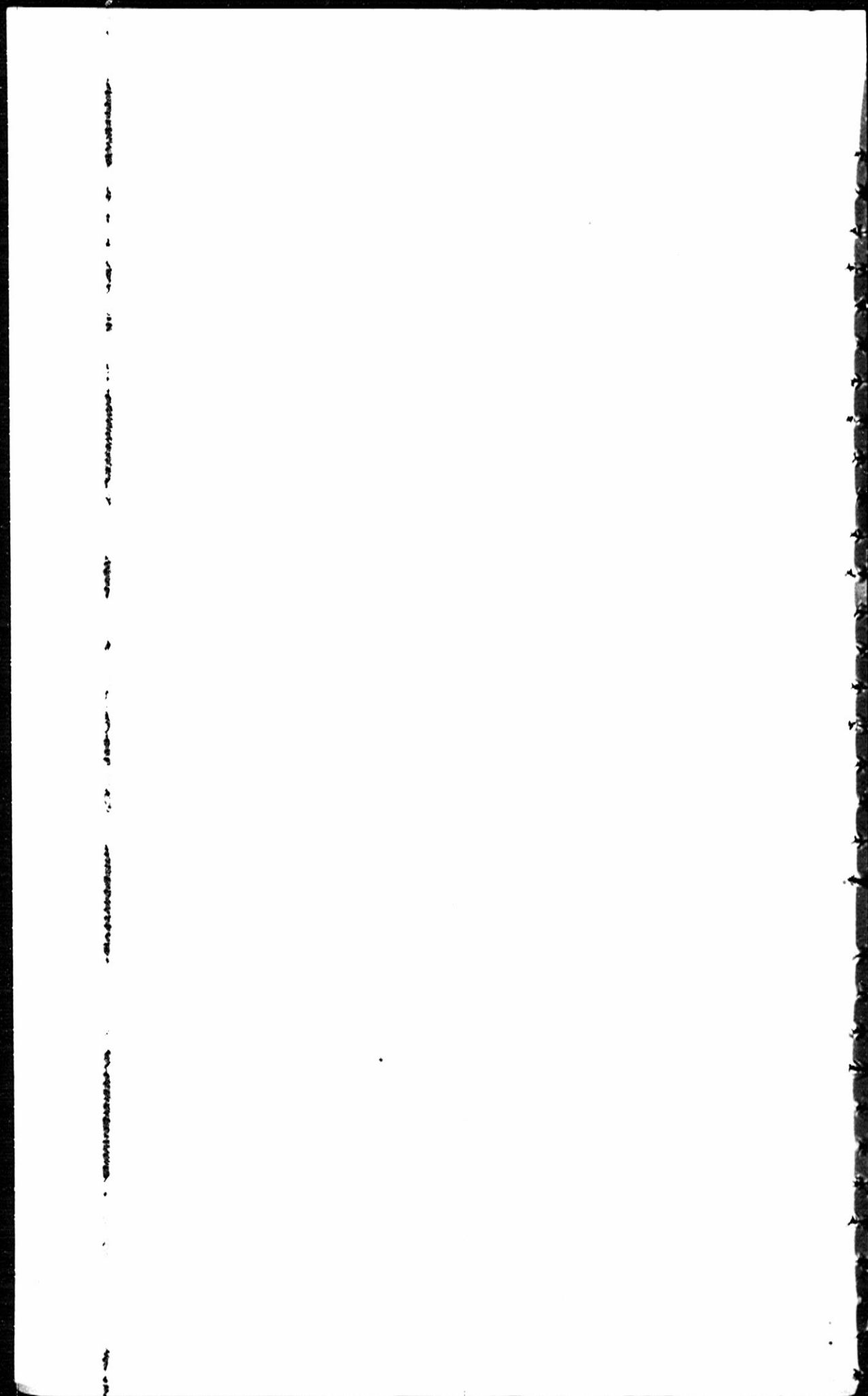
Sec. 13. The board of directors established under
2 the provisions of this act is hereby designated the Power
3 Management Board.

Sec. 14. Immediately after the appointment of the
2 directors as provided in this act, the Attorney General
3 shall bring appropriate legal action against the directors
4 to determine their right to office.

Sec. 15. The board of directors provided for in
2 this act shall succeed to the powers and duties of their
3 predecessor boards of directors on July 1, 1968.

Sec. 16. This act shall be construed as a complete
2 and independent act.

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[4917]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of)
) Project No. 2289
Rocky Mountain Power Co.)

**APPLICATION FOR RECONSIDERATION OF
ORDER OF DISMISSAL AND FOR
REINSTATEMENT OF APPLICATION**

Rocky Mountain Power Co. hereby applies, pursuant to Section 1.34 of the Commission's Rule of Practice and Procedure, for reconsideration of the Commission's order, issued February 16, 1967, dismissing application for license pursuant to Opinion No. 514, and for reinstatement of its application for Project No. 2289, subject to reasonable review as hereinafter suggested; and in support thereof respectfully shows that:

1. Said Order of Dismissal of Application for Project No. 2289 is not supported by the facts, engineering data, and other pertinent information properly in the record of these proceedings.

2. Said Order is contrary to the public interest in that it prejudices and impedes Applicant's diligent and substantial efforts to finalize well conceived plans to make beneficial use of the hydroelectric and fossil fuel resources described in its application for the benefit of electric power consumers within the State of Nebraska and its neighboring states (other than Colorado) at sound and reasonable costs and prices.

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3. Said Order, if finalized, will result in irreparable injury to valuable property rights and interests which this Applicant has acquired by the investment of large sums of

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money and great effort in the face of constant harrassment from and by Intervenor and those in concert with them.

4. Said Order was granted in response to the Motion to Dismiss of the Public Service Company of Colorado joined in by other Intervenor and the Commission's staff, notwithstanding the total absence in this record of any allegation or showing by the Intervenor from which this Commission may find or surmise that "rights and interests specifically set forth in their petitions" are in any wise related to said Motion to Dismiss or that they, or any of them, "might be aggrieved" by the continued pendency of this proceeding.

5. That said order is based on the incorrect and totally unsupported assumption that the public or any Intervenor in this proceeding has been injured, or adversely affected or aggrieved by the time consumed to date by Applicant to improve and expand the capability of Project No. 2289 to meet the requirements of markets and consumers greatly in need of such power or that the public or any Intervenor will be or may be injured, adversely affected, or aggrieved by the elapse of such additional time as may be required for this Applicant to explore, diligently and fully, power purchase and sales arrangements and agreements with potential consumers of the power which can be economically produced from the resources described in this application. The superficial and supercilious motion of the Public Service Company

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of Colorado contains no reference whatsoever to any adverse effect upon its monopoly over a wide territory embracing electric users in Colorado. Neither does that Intervenor deny that it has appreciably contributed to the alleged delays in Applicant's preparation since the initial filing of this application, as alleged and supported in Applicant's Answers to Intervenor's Motion to Dismiss. The Motion of Public Service Company of Colorado, at the most, consists of a transparently patronizing expression of concern that

this Commission may somehow be inconvenienced by the presence in its files and records of Application for Project No. 2289 during the additional period of time which this Applicant must devote to counteracting the harrassments of the Intervenor, on the one hand, while striving diligently to consummate a power sales arrangement and agreements with representatives of clearly identified markets and consumers, on the other.

6. That, before issuing an Order having a grossly adverse and injurious effect upon this Applicant, the consumers Applicant proposes to serve, as well as the public interest, the Commission must affirmatively find that the Intervenor has a lawful interest in the subject matter of this proceeding of the quality and character entitling them to seek such an Order. In its petition to intervene, the Public Service Company of Colorado has taken two irreconcilable and conflicting positions before this Commission between which said Intervenor should be required to elect before its motion to dismiss is considered, to wit: By paragraphs 1, 3 and

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6 of its petition to intervene, said Intervenor protests its intra-state character and, apparently, refutes the existence of any interest in the sale or supply of power beyond the boundaries of the State of Colorado, proclaiming that it is only concerned with the protection of its monopoly to exploit Colorado hydro and thermal resources for the purpose of selling power to users within its captive market at the prices bred of monopoly. But, by its paragraph 4 of the same petition, this Intervenor declares that it has or will install facilities to serve "the general market area proposed to be served by Rocky Mountain Power Co." and, "to provide adequately for all present and realistically future power requirements of such area". Project No. 2289 as now pending before this Commission is, clearly, an *inter-state* proposal to serve consumers in several states. Hence, Public Service Company of Colorado must be required to elect between these two inconsistent positions before the Commis-

[4920-4921]

sion may lawfully act upon its motion to dismiss. In fact, this is the type of concern to which staff counsel should be directing its attention rather than a totally non-injurious lapse of time.

7. The Applicant, at great expense and in the face of constant harrassment, has acquired, and now possesses, water right and interest in reservoir and power sites of great present value and of vastly greater potential value if and when applied to the production of power and the other compatible uses for which said resources were acquired. Under the applicable law of Colorado, decrees awarding the priority right to all claimants are "conditional" until such time as the water has in fact been applied to its proposed beneficial use. The Colorado law further

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requires the successful claimant to periodically demonstrate to the satisfaction of the Court that the claimant is exercising "due diligence" in its effort to consummate its plans for applying the waters awarded it to beneficial use. Said order of dismissal grossly, unfairly, unjustly, inequitably and unlawfully prejudices this Applicant's appearance and proceeding before the Courts having jurisdiction over its valuable water rights and related interests all to the direct and specific benefit and advantage of the Intervenor in this proceeding who directly or through fronts or agents, presently assert inferior claim to the water rights and interests of this Applicant and, if for no other purpose, will use this order to further harrass the Applicant in the State Courts and other tribunals. This Applicant also has expended large sums and has become obligated for large additional sums of money which have been expended on its behalf in the performance of the engineering work and related studies necessary to demonstrate the engineering and economic feasibility and soundness of Project No. 2289. As a part of its engineering and economic feasibility studies, the Applicant negotiated agreements containing firm prices with the manufacturers of some 80% of the heavy equipment to be

installed in its power producing facilities and has negotiated additional like agreements with the constructors and contractors who will build the major features of the project. These equipment contracts include the reservation of time spaces in the manufacturing plants operating and production schedules

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for the delivery of said equipment as agreed. Said contract, by their terms, must be reviewed from time to time. The sufficiency of the proof of "due diligence" may be so materially degraded by the order of dismissal of this application at this time as to result in great and irreparable damage and loss to this Applicant. The review of the agreement with equipment suppliers and contractors may also be so adversely affected by the order of dismissal at this time and the unsupported statements in the opinion upon which it is based at a time when the suppliers of said equipment are being subjected to highly competitive demands for materials in short supply as to result in great and irreparable loss to this applicant.

8. Said order and opinion assumes (in the footnote on pages 4 and 5) (a) that a "coal fired steam-electric generating station at Grand Island is feasible or its product competitive with power to be supplied by this applicant; (b) that Applicant seeks to serve Omaha; (c) that a nuclear power plant on the Missouri River, now proposed by Consumers Public Power District, is a substitute or competitive alternate to a supply of power from Project No. 2289; (d) that the Bureau of Power has any uncommitted power to sell or deliver in Nebraska; (e) that various transmission lines can or will be built to avoid need for Applicant's power by Nebraska consumers. All of these assumptions are erroneous in fact; have no foundation in the records of this proceeding and the consideration thereof is unlawfully prejudicial to the rights of Applicant and constitutes

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an attempt by the Commission to eliminate a bona-fide and proper competitor for the Nebraska electro-power market and to unlawfully discriminate between competing potential power suppliers.

9. That said opinion and order ignore completely the information supplied by the Nebraska Power Review Board and Consumers Public Power District, which stands as uncontroverted evidence before the Commission, showing that the State of Nebraska is an area of deficient power supplies, has suffered blackouts to the detriment of its citizens and is confronted with the possibility of further and more grievous blackouts unless the supply of power such as that offered by this petitioner becomes available to it in the near future.

10. Said Order is contrary to and violative of applicable rules of law and equity, and is inconsistent with actions and decisions heretofore taken by this Commission under similar circumstances and unjustly discriminates against this Applicant.

11. That the application is of recent origin under all circumstances of the case and no injury whatsoever to the public interest or any intervenor would result from holding additional proceedings within a reasonable time as may be required for this Commission to satisfy itself, the public, and all public party interest, that the project is feasible and economically essential to the consumers of Nebraska and neighboring states.

12. The applicant, Rocky Mountain Power Company, hereby adopts all the points made by the Nebraska Power Review Board

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in its Motion for Reconsideration dated March 10, 1967, and urges these points as its own.

13. That the Commission was in error in allowing the

intervention of Public Service Company of Colorado, acting illegally and beyond its monopoly power, in that such intervention under its terms constituted a violation of both 15 U.S.C. §§ 1-7 (Sherman Anti-Trust Act) and 16 U.S.C. § 803(h) (Federal Power Act).

14. That the Commission erred in condoning the action of staff counsel in joining in the motion made by Public Service Company of Colorado without investigation, consideration or report on the applicable prohibitions of 15 U.S.C. §§ 1-7 and 16 U.S.C. § 803(h).

15. That the errors enumerated above in paragraphs 13 and 14 were matured by the Commission's order granting the motion to dismiss. As a consequence of this action by the Commission, violations of 15 U.S.C. § 2 and 16 U.S.C. § 803(h) have been compounded.

16. That the following events give further evidence in support of favorable consideration of the application:

(a) On or about July 20, 1966, the District Court in and for Rio Blanco, Colorado, handed down its finding of fact in Case No. 1269, entitled "In the Matter of the Supplemental Adjudication of Priorities of Right to the Use of Water for All Beneficial Purposes in Water District No. 43, in the State of Colorado". By the terms of said findings of fact, the appropria-

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tions of the waters of the South Fork of the White River within District 43 by Rocky Mountain Power Company have been declared superior and prior in time to the claims of the Intervenor, the Colorado River Water Conservation District. Said findings of fact were consolidated into a judgment and decree, dated November 10, 1966, affirming the initial findings of fact and conclusions of law and adjudicating to this Applicant the waters claimed by said Applicant under the laws of the State of Colorado for power producing purposes as described in its application on file before this Commission.

[4925-4926]

(b) That on or about the 9th of November, 1966, this Applicant and the White River Electric Association, Inc., entered into an agreement of settlement and compromise of an action previously initiated by the said White River Electric Association, Inc., Civil Action No. 1319, entitled "In the Matter of the Petition of White River Electric Association to Change the Point of Diversion of 180 Cubic Feet of Water Per Second of Time Adjudicated to the Meeker Power Ditch No. 181 as Power or Domestic Priorities 7, 22, and 26 in the Decrees of This Court for Water District No. 43 from the Headgate of Said Ditch to A Point Further Upstream at the Headgate of the Highland Ditch". By the terms of the decree to be entered pursuant to said compromise, no change in point of diversion can lawfully be initiated or undertaken, if the effect thereof shall in any manner whatsoever adversely affect or diminish the rights of this Applicant to the use of the waters of the South Fork of the White River for which it now holds adjudicated decrees.

[4926]

(c) That subsequent to the motion and continuing to the present, the Applicant has diligently and earnestly worked with various power generating, distributing and consuming entities in the State of Nebraska and neighboring states on the engineering and all related phases for the best utilization in Nebraska and neighboring states of the power to be produced in the facilities described in its application. That as a result of said work there exists among responsible electric power distributors and users in the State of Nebraska an active interest in the power which will be generated by said facilities.

(d) That said Applicant has appeared in hearings convened by the Forest Service of the United States Department of Agriculture involving the establishment of the proposed Flat Tops Wilderness, because a proposed boundary change of said Wilderness area would adversely affect the establishment of its Lost Solar pumped-storage facilities. Said petitioner has filed statements and otherwise submit-

ted evidence and arguments designed to induce a readjustment of the boundaries of said Flat Tops Wilderness so that the same would not interfere with the Lost Solar phase of its project. Concurrently, the Applicant has re-engineered the Lost Solar generating plant so that the boundaries of said Flat Tops Wilderness need be adjusted only in a minor degree to be wholly compatible with the proposed Flat Tops Wilderness which this Applicant favors and supports.

(e) That pursuant to an order to and subsequent invitation from the Missouri Basin Systems Group, this Applicant prepared and presented to said group on November 30, 1966, at Denver,

[4927]

Colorado, proposals and plans by means of which the power to be generated in the Applicant's facilities can be used in combination with other presently power producing facilities available to said Missouri Basin Systems Group to serve all of the power users in the deficit areas of Nebraska and neighboring states. A copy of said proposal is hereto attached and identified as "Reconsideration Application, Exhibit A". Such an operation between the Missouri Basin Systems Group and the Mountain Midwest Power Pool would assure an abundant supply of electric energy to the area and promote the public interest.

(f) Applicant has also prepared a critical study of the trend in surface water supplies of the Colorado River, the Missouri River, the Rio Grande and the Columbia, together with a study of the availability of fossil fuels for power generation in the States of Nebraska and Kansas which was presented at a meeting of representatives of major electric consumer groups in Kansas, Nebraska, Wyoming, and other neighboring states, convened in Denver on March 2, 1967. A copy of this study is attached and identified as "Reconsideration Application, Exhibit B".

These proposals and plans covered by Exhibits A and B require the Commission's consideration in assuring compre-

[4927-4928]

hensive development of alternative power sources as contemplated by Section 10(a) of the Federal Power Act. Title 16 §803(a).

(g) On or about January 12, 1967, the Applicant acquired full and unencumbered title to the so-called Currier Ranch upon which the Sweetwater hydroelectric project will be located.

[4928]

(h) Applicant has conducted extensive surveys and made additional formal filings with the State Engineer upon the waters of the Yampa River and Trout Creek in northwest Colorado for the purpose of establishing and assuring the Oak Creek plant with ample and certain make-up water at all times.

(i) Representatives of Applicant and Consumers Public Power District of Nebraska have diligently pursued their efforts to reach an agreement to develop plans and schemes by means of which Applicant's power resources will be made available to consumers in Nebraska and neighboring states. Such negotiations have been confirmed by letter to the Federal Power Commission dated March 7, 1967, from the Operations Director of Consumers Public Power District (copy attached). Said negotiations have involved the development, exchange, comparison and discussion of large amounts of electric data concerning the transmission and distribution of electrical energy, the interchange and coordination of electric energy to be produced by Applicant's facilities with those in existence and numerous meetings (in excess of twenty) in Columbus, Lincoln, and other cities in Nebraska, or in Denver, Colorado.

(j) Applicant has been in active negotiations with major proposed developers of oil shale concerning the use of its extraordinary valuable water in Sweetwater Creek and White River in the production of oil from oil shale after said waters have served their power producing purposes.

[4929]

(k) Applicant has negotiated for and secured the extension of all major contracts previously entered into for the construction of its facilities and for the manufacture and supply of the major items of equipment required in said facility; as a result of which said contracts have been extended to April 1, 1967, and the program of construction has been re-examined and replanned so that power can and will be made available from Consumers Public Power District of Nebraska facilities by May 1, 1970, if the execution of the contracts can be released in the near future.

(l) That the Applicant has further negotiated an extension of its contract for a firm supply of coal to April 1, 1967.

(m) That in the performance and achievement of all of the foregoing, the Applicant has expended for property and for engineering, legal, technical and other services, an additional sum over and above that heretofore reported to the Commission in excess of \$250,000.

THEREFORE, this Applicant respectfully prays that this Commission reconsider its Opinion No. 514 and enter an order herein reinstating the application and granting reasonable time within which this applicant may present evidence of the consummation of a firm contract for the sale of a sufficient quantity of power to be generated from its facilities to establish the economic feasibility of said project and evidence that it has secured the necessary financing for the construction of said facilities.

[4930]

That the duration of said extension of time shall be conditioned upon periodic showing by this Applicant that it is diligently pursuing its efforts to consummate contracts to make power available at reasonable prices to markets and consumers genuinely in need thereof so that this Commission may judge the good faith and competent effort of the Applicant to develop this economic power supply in the public interest.

[4930-4931]

That this Commission specifically rule upon the protest of this Applicant to the participation of Public Service Company of Colorado, Colorado Western Power Company, and Utah Power and Light Company, in this proceeding as Intervenor; that said Applicant is in no wise in competition for markets which said Intervenor now serve or offer to serve, or in the alternative, that said intervenors and their confederates be ordered to establish that their participation is not an illegal attempt to restrain trade and commerce, in violation of Title 16, §803(h) of the Federal Power Act and Title 15, §1 and 2 of the Federal Anti-Trust Laws.

Respectfully submitted,
ROCKY MOUNTAIN POWER
COMPANY

By /s/ Smith W. Brookhart
Smith W. Brookhart
Attorney for Applicant

Dated at Washington, D.C.
March 20, 1967

[4931]

VERIFICATION

District of Columbia, ss:

Smith W. Brookhart, being first duly sworn, deposes and says that he is Attorney for Rocky Mountain Power Company, applicant herein, that he has read the foregoing Application for Reconsideration and that he is authorized to file the same with the Federal Power Commission.

/s/ Smith W. Brookhart
Smith W. Brookhart

Subscribed and sworn to before me this 17 day of March, 1967.

/s/ Marshall H. Gromm
Notary Public, D. C.

[4931-4932]

My Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing upon all the parties of record in this proceeding in accordance with the requirements of Section 1.17 of the Rules and Practice and Procedure.

Dated at Washington, D. C., this 20th day of March, 1967.

/s/ Smith W. Brookhart
Smith W. Brookhart
Attorney for Applicant

[4932]

CONSUMERS PUBLIC POWER DISTRICT

March 7, 1967

Federal Power Commission
Washington, D.C. 20426

Gentlemen:

Subject: Rocky Mountain Power Company,
Project No. 2289.

It is our understanding that the Rocky Mountain Power Company will request the Federal Power Commission to re-examine its Project No. 2289, in order to supply you with updated information.

This letter is to advise you that negotiations are still in progress between Consumers Public Power District and the Rocky Mountain Power Company for the possible purchase of some power from this project. Final results will be de-

[4932, 4934]

layed until we have completed several studies which are now under way.

Yours very truly,

Don E. Schaufelberger,
Operations Director

fk

Cc. R. D. Wilson
D. W. Hill
Charles F. Brannan
William H. Norton

C O P Y

[4934]

*INTERCONNECTION AND COORDINATED
POOL OPERATION*

BETWEEN

MISSOURI BASIN SYSTEM GROUP

AND

MOUNTAIN-MIDWEST POWER POOL

Introduction

This memorandum first sets out the basic data and the operational parameters of the Missouri Basin Systems Group on the one hand and the coordinated systems of the Mountain-Midwest Power Pool on the other. It then proceeds to explore and describe the benefits and advantages to be secured by both groups from interconnection and coordinated pool operation.

In preparing the present analysis, the requirements of the ultimate customer - the one who finally pays the bill for

the electric energy he receives - has been kept constantly in the forefront. The ultimate consumer is interested solely in two aspects, namely;

- (a) The amount of his bill. This depends primarily on the electricity rates he pays.
- (b) The reliability of the supply. He cannot control that directly, but he expects, justifiably, that the power for which he pays will be available when he needs it.

NOVEMBER 1966

[4935]

1. *THE MISSOURI RIVER PROJECT AND POWER SYSTEM*

The very magnitude of the multi-purpose project constructed to control the main stem of the Missouri River is best illustrated by the simple figures below:

Total drainage area above Sioux City, Iowa	314,600 sq. miles
River length, Fort Peck to Gavin's Point	960 miles
Length of transmission lines, Fort Peck to Gavin's Point	702 miles
Maximum gross storage in all reservoirs	75,000,000 acre-feet
Minimum storage reached in 68 years of historical record	18,340,000 acre-feet
Installed capacity (total name-plate ratings)	2,048 megawatts

Since the time the reservoirs have become effective to control floods in the river basin, it has been estimated that some \$380,000,000 of damage from floods has been avoided.

2. *WATER SUPPLIES*

A supplemental report was issued in April 1959 on "Adequacy of flows in the Missouri River", based on the histo-

[4935-4936]

rical stream flows of the USGS records and estimates. Based on this, a most comprehensive study has been made available under the heading: "Missouri River, Main Stem Reservoir Operation. Study PGOR-19B, dated August 1966." This study shows clearly what historically would have been the actual performance of this multi-purpose project with each one of the purposes receiving due and proper share of the overall benefits for each month of the 68 year historical period of record. This study establishes what can be considered as:

- (a) Extent of control of floods and the water releases.
- (b) Variation in the duration of the navigational period.
- (c) Power generation, both as regards energy in kilowatt hours and short term peaking capability in megawatts of each plant.

It is significant to note that the average of mean annual water supplies up to 1930 were appreciably greater than those since 1930. The average annual values, in millions of acre-feet, are:

69 year average, 1898-1966	24.2	100 %
32 year average, 1898-1929	29.8	115 %
37 year average, 1930-1966	21.1	87.3%

May not the fact that the annual average since 1930 is 28% below that prior to 1929 indicate that the Basin is passing through a long dry period? It also seems prudent to assume that it is, until at least there has been a succession of at least twelve years to prove the contrary.

[4936]

3. *DEFINITION OF FIRM ENERGY AND FIRM CAPACITY*

In the Pacific Northwest the Utilities operate a large Power Pool comprising Federal Agencies, Utility Districts and Private Power Companies. To meet the interpretation accepted by the power purchasers of firm energy and firm capacity, the historical streamflows are evaluated for the

main stem and tributaries and the optimum control of the reservoirs established. From this is derived the most critical period (measured in months) in the years of record. As Canadian storage is brought in and used to augment the supplies of water in the dry years, the length of the critical period for the Columbia Basin as a whole will be increased, and when the power interconnection of the British Columbia Peace River Project with the Bonneville Power Administration becomes effective, this will be lengthened still further. The generation which can be obtained under minimum available water supply conditions in this critical period is used as the definition of firm capacity and energy; everything above that is secondary.

From the power purchaser's - the consumer's - point of view, this definition is both reasonable and acceptable because he can base his operations on the knowledge that historically he can rely on his contracted firm power that is his share of the Basin's minimum amount of power and energy under the most adverse conditions. More important still, this definition has stood up to the test of time.

4. *CRITICAL PERIOD FOR MISSOURI BASIN*

The study PGOR-19B assumes full storage in March 1898, the first year of record, and shows what would have been the actual generation at each plant month by month, having regard to the necessity of meeting fully the other requirements of this multi-purpose project. There are many purposes to be satisfied and each at one time or another receives overriding preference, such as:

Flood control.

Navigation.

Keeping the streams clean and public health.

Irrigation and water supply.

This study shows that the critical period based on the same definition as that used in the Pacific Northwest to determine firm power and energy would be from October 1934 to February 1943, or a total period of 101 months. The

[4936-4937]

critical period for water supplies started in 1920, when main storage had to be used for releases. Thus, power-wise, the near minimum was reached in 1934, but the absolute minimum did not occur until 1937.

Using the same definition, the Basin experienced another critical period from June 1961 to June 1962, or a total period of thirteen months.

[4937]

The "Supplemental Report on Adequacy of Flows in the Missouri River" clarifies the power terms used in that report by presenting definitions. These definitions refer to power available at the power plants before any adjustments for transmission system losses or diversity (page 40 of Supplemental Report):

"Dependable Capacity is the estimated system generator capability which would be available in December following four years of adverse water supply conditions similar to the 1930-1933 period of record, after deducting station or plant use.

"Firm Power is that power intended to have assured availability to provide for the customers' load requirements, under specified conditions, as limited by, (a) the Dependable Capacity after reduction for reserves, and (b) the long range average annual and seasonal energy production.

"Firm Peaking Power is the Dependable Capacity remaining, after reduction for reserves, and after deducting the capacity associated with Firm Power. Sales of Firm Peaking Power is predicated on the return of associated energy during periods when it can be effectively utilized by the Federal power system."

Paragraph 8 on page 24 of PGOR-19B refers to 1933 as the fourth year of drought and proceeds to quote what would have been the power position based on historical records of stream flows if the multi-purpose project had been completed at the beginning of the period of historical rec-

ord. This indicates that the basin used for evaluating the marketable firm power and energy from the Missouri Basin is 36 months guaranteed supply, but in December of the fourth year after commencement of a drought period the contracted supplies of power and energy may not necessarily be delivered if shortage of water supplies continues. If this interpretation is correct, and is applied to the present day, it means that:

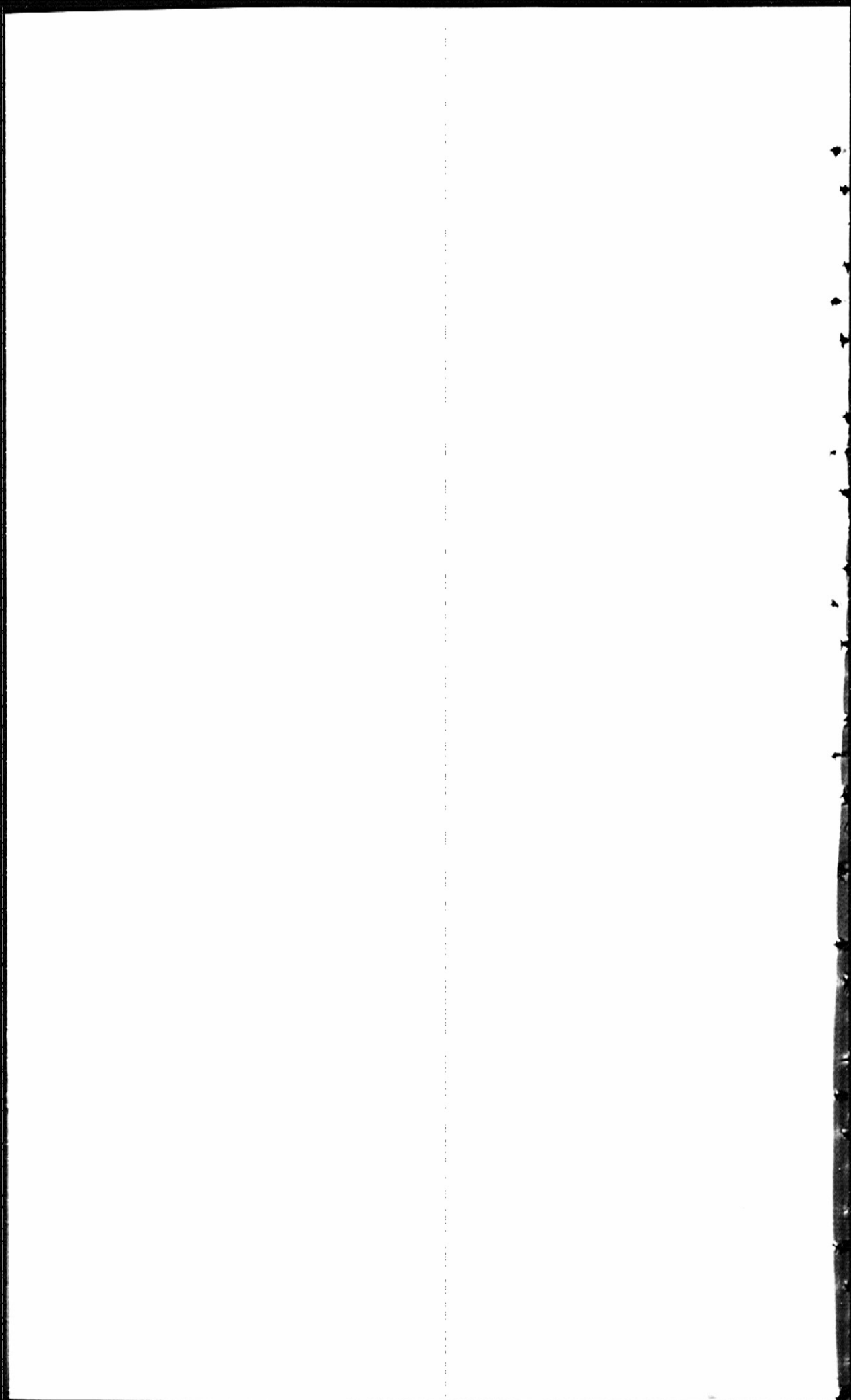
With 1966 having proved itself to be a bad year as regards water supplies, in fact it is within the lower quartile; and if 1967, 1968 and 1969 are also bad years, then the various consumers who have contracts for supply of power and energy from the system must either have their own power facilities operationally available by 1969, or possibly 1970, or they will have to seek sources for power and energy elsewhere to meet the deficiencies in the available suppliers from the Missouri Basin System.

To produce a balanced operational plan for a multi-purpose project like the Missouri Basin, all purposes must receive their due proportion of benefits and in that context the definitions quoted are reasonable and logical. However, that does not mean that the "consumer" will have, or agree to have, the same definition or interpretation and reconciliation of

TABLE I - PEAK LOAD AND ENERGY FOR 68-YEAR AVERAGE AND FOR 1933, 1937 & 1961
FOR POWER PLANTS ON MISSOURI MAIN STEM

	68-Year Average		1933		1937		1961	
	Peak Load MW @ 55% LF	Energy Million KWH	Peak Load MW @ 55% LF	Energy Million KWH	Peak Load MW @ 55% LF	Energy Million KWH	Peak Load MW @ 55% LF	Energy Million KWH
Fort Peck	185	890	117	563	84	405	148	712
Garrison	350	1684	225	1081	146	704	204	977
Oahe	390	1875	271	1300	158	760	237	1138
Big Bend	162	778	124	596	93	448	108	519
Fort Randall	247	1185	177	849	131	628	255	1225
Gavin's Point	102	490	79	382	63	303	74	353
Total with Fort Peck	1436	6902	993	4771	675	3248	1026	4954
Total without Fort Peck	1251	6012	876	4208	591	2843	878	4212

Note: Includes data given in para. 7, page 24 of Study PGOR-19B, dated Omaha, August 1966.



[4939]

these two apparently opposite interpretations is the real problem facing the Missouri Basin in the electrical power sphere.

Absence of sources of water to assure adequate supplies during the years of drought makes the siting of a thermal plant very difficult because it is particularly in the drought years when the power and energy will be required most to meet the deficiencies from the Missouri Basin System. There is of course in addition, the problem of getting a thermal plant designed and constructed, which presently requires at least three years for construction if the major design has been completed.

Experience in recent years shows that the situation is even more serious, because drought causes a substantial increase in demand for energy for air conditioning and irrigation pumping, just at the time when there could be a curtailment of power supplies from the Missouri Basin. Summer rains produce an increase in available supplies of power and energy but a reduction in the power demand by the load.

5. *FIRM CAPACITY AND ENERGY FROM MISSOURI RIVER PROJECT*

It would appear that in the "Tentative five-year extension of 1966-67 A.O.P." the lower quartile and adverse curves assume that a lower quartile or adverse year is followed by a median year, because otherwise the storage, the peaking capability and the average power would be progressively lower. If the experience of the water supplies of the early thirties or the late fifties is repeated, there will be a serious shortage of power and energy in the Basin. Projections of future supplies of power and energy would be more realistic if the curves in Plate No. 8 of "Summary of Actual 1965-66 Operations and Annual Operating Plan for 1966-67" showed also the worst projections assuming a succession of four drought years - which historically has occurred more than twice in the thirty years of record, 1930-1960, because

[4939]

apparently this forms the proposed basis of definition for firm power and energy for the consumers of the Missouri Basin System.

Similarly, the table at the top of page 24 of Study PGOR-19B, would reflect the historical record more realistically if it was rewritten as in attached Table I:

Table I - Peak Load and Energy 68-years average and for 1933, 1937, and 1961 for Power Plants on Missouri Main Stem.

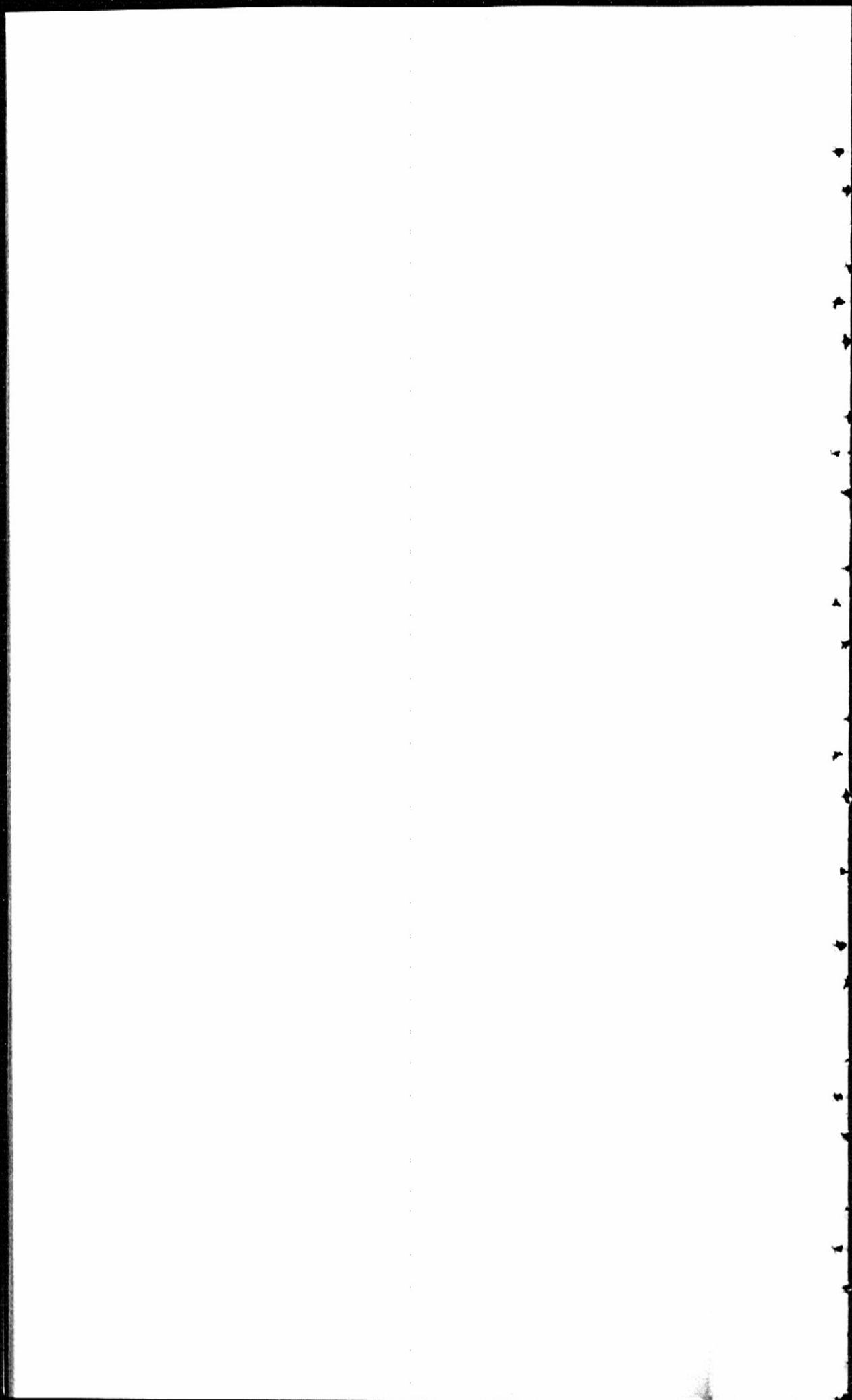


TABLE II - ACCEPTABLE PEAK LOAD AND GENERATION FOR 1933, 1937, & 1961
FOR POWER PLANTS ON MISSOURI MAIN STEM, INCLUDING FORT PECK

Month & Period	Average 1898 to 1965 Million KW Hrs.	1933				1937				1961			
		Million KW Hrs.	Monthly Peak Load In MW based on LF			Million KW Hrs.	Monthly Peak Load In MW based on LF			Million KW Hrs.	Monthly Peak Load In MW based on LF		
			50 %	55 %	60 %		50 %	55 %	60 %		50 %	55 %	60 %
March 16-31	256	203	1060	965	880	179	930	850	780	234	1220	1110	1020
April	518	512	1420	1365	1185	376	1045	950	870	499	1385	1260	1155
May	547	459	1235	1120	1010	369	990	900	825	480	1290	1170	1075
June	541	525	1380	1325	1250	322	895	815	745	327	910	825	760
July	675	503	1355	1230	1125	337	905	825	755	464	1250	1135	1035
August	687	392	1055	955	875	282	760	690	630	373	1000	910	835
September	601	377	1050	950	875	229	635	578	535	345	960	870	800
October	571	314	845	765	705	201	540	492	450	302	810	740	675
November 1-15	273	160	890	810	740	100	555	505	460	151	838	765	700
November 16-30	299	158	880	795	730	104	578	525	480	152	845	770	705
December	558	344	925	842	770	218	585	535	480	330	885	810	740
January	573	347	930	850	775	222	595	570	495	338	916	825	755
February	519	312	835	765	700	201	540	495	450	300	805	735	670
March 1-15	284	165	917	830	765	106	590	535	480	163	906	825	755
Total with Ft. Peck	6902	4771				3247				4954			

KW Hours per month abstracted from Study PGOR - 19B

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[4941]

Using the usually accepted and more realistic definition of Firm Capacity and Energy, the figures listed in PGOR-19B on Page 24 should include also the years 1937 and 1961, and these are given in Table II:

Table II - Acceptable Peak Load and Generation for 1933, 1937, and 1961 for Power Plants on the Missouri Main Stem including Fort Peck.

Peaking capability has been omitted because it could be lower than the figures given if turbine output capabilities are corrected for actual operating heads and if proper allowance is made for the carefully controlled releases required during the winter months from Fort Peck and from Gavin's Point to protect and maintain the sheet of ice on the river downstream in each case.

Historically, this means that without any other sources of power, the firm annual generation for the Missouri Plants amounts to 3,247,000,000 kilowatt hours and for different monthly system load factors the summer and winter firm power capability - maximum one hour sustained aggregate peak load demand on power plant busbars would be:

	<i>Maximum one hour capability</i>	
	<i>Summer</i>	<i>Winter</i>
<i>Historical Year 1933</i>	<i>July MW</i>	<i>December MW</i>
Monthly Load Factor 50 %	1,355	925
Monthly Load Factor 55 %	1,230	842
Monthly Load Factor 60 %	1,125	770
<i>Historical Year 1937</i>		
Monthly Load Factor 50 %	905	585
Monthly Load Factor 55 %	825	535
Monthly Load Factor 60 %	755	480
<i>Historical Year 1961</i>		
Monthly Load Factor 50 %	1,250	885
Monthly Load Factor 55 %	1,135	810
Monthly Load Factor 60 %	1,035	740

[4941]

If the summer peak load demands occurs in August, these one-hour capabilities - according to PGOR-19B - will be reduced quite appreciably. However, in such a case it is probable that releases in July could be reduced and those in August increased.

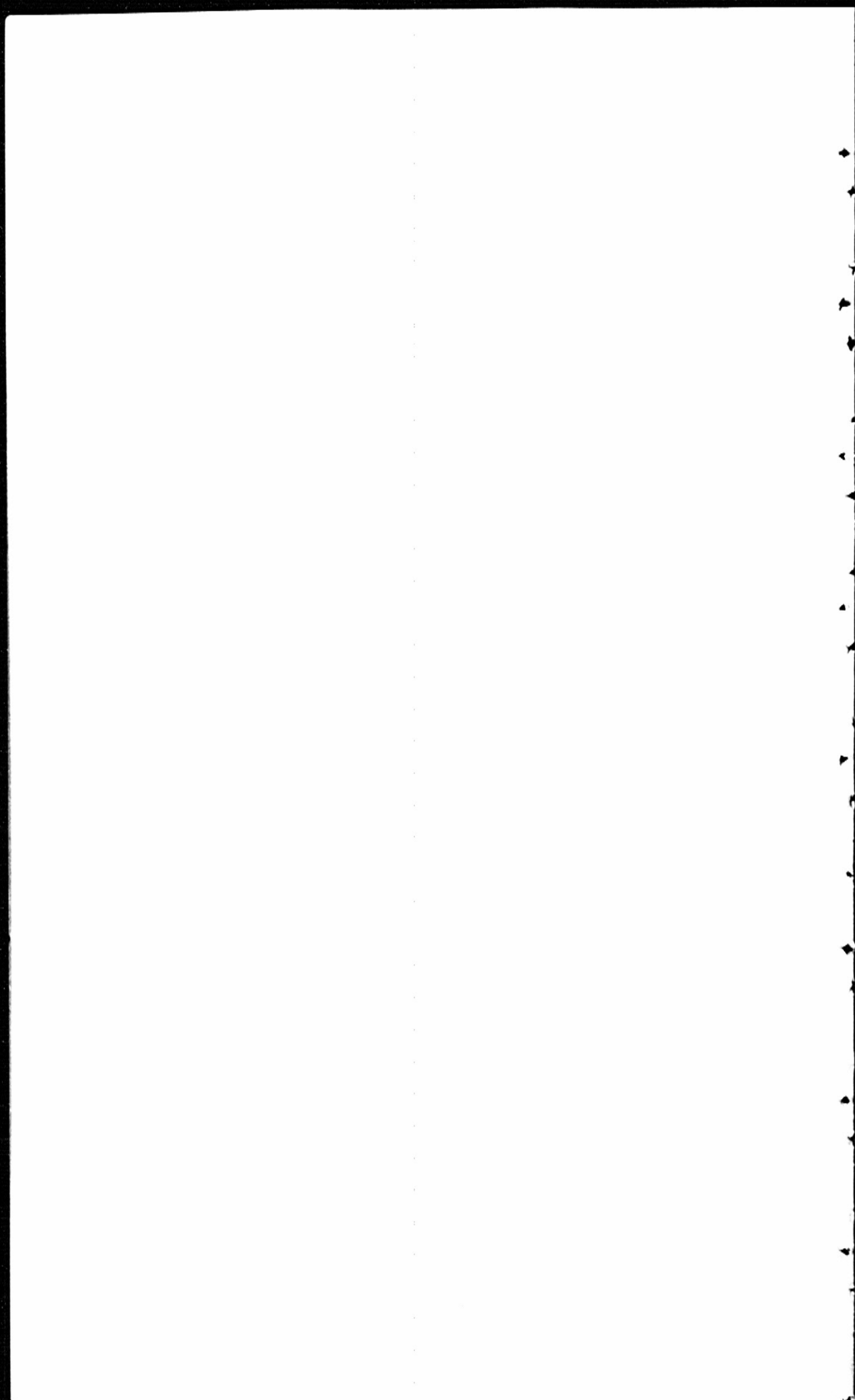
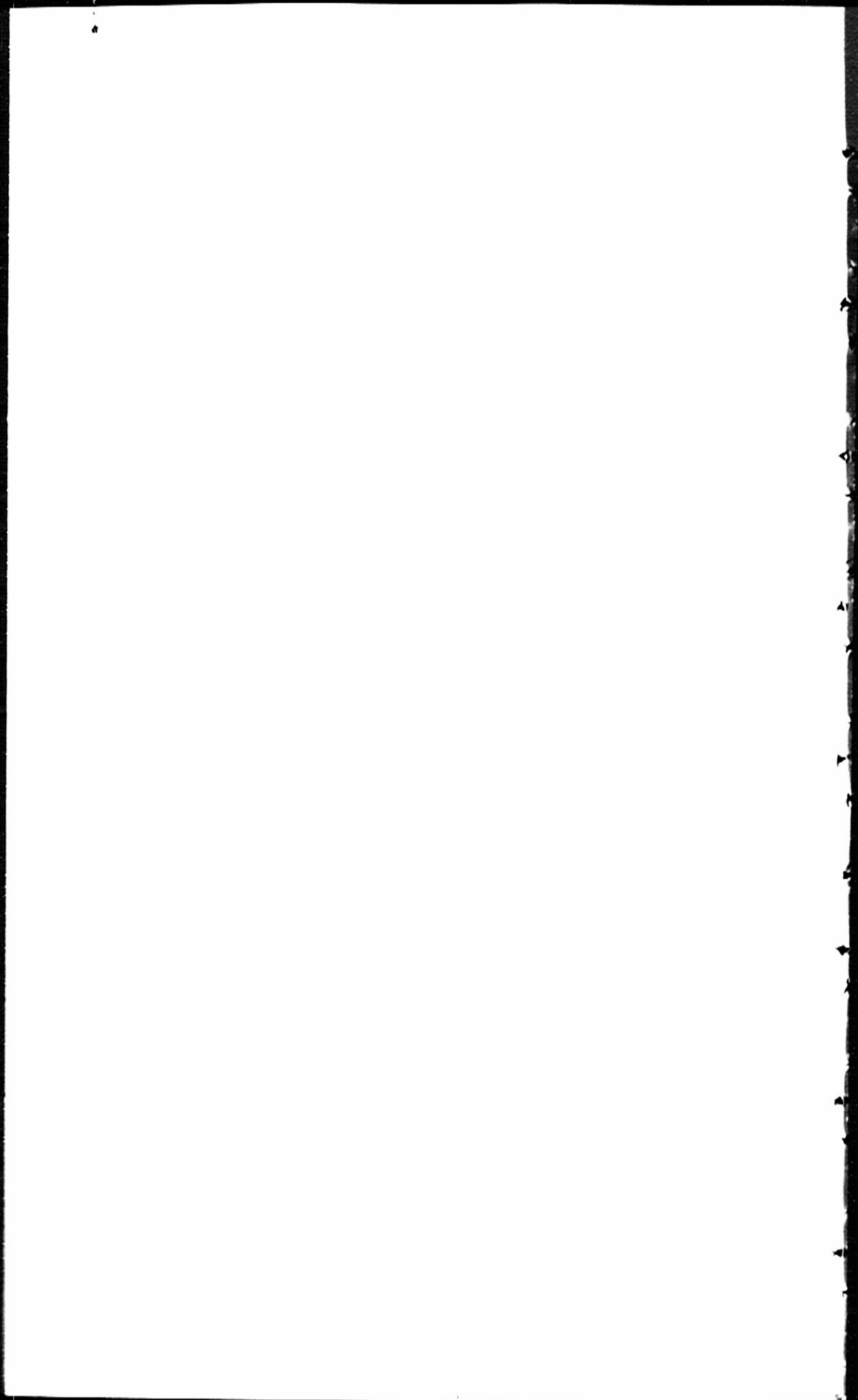


TABLE III - ACCEPTABLE PEAK LOAD AND GENERATION FOR 1933, 1937, & 1961
FOR POWER PLANTS ON MISSOURI MAIN STEM - WITHOUT FORT PECK

Month & Period	Average 1898 to 1965 Million KW Hrs.	1933				1937				1961			
		Million KW Hrs.	Monthly Peak Load In MW based on LF			Million KW Hrs.	Monthly Peak Load In MW based on LF			Million KW Hrs.	Monthly Peak Load In MW based on LF		
			50%	55%	60%		50%	55%	60%		50%	55%	60%
March 16-31	221	189	1050	955	830	167	925	845	775	204	1135	1030	945
April	477	485	1335	1225	1125	353	980	890	820	471	1310	1190	1090
May	499	432	1170	1055	970	345	925	845	775	451	1210	1100	1010
June	486	498	1385	1255	1155	299	830	755	690	299	830	755	690
July	612	474	1275	1160	1060	301	810	735	675	435	1170	1065	975
August	609	341	915	830	765	211	565	515	470	344	925	840	770
September	529	321	890	810	745	184	510	465	425	244	680	615	565
October	505	265	710	650	595	173	465	425	390	195	520	475	435
November 1-15	239	118	655	595	545	77	450	390	365	102	565	515	470
November 16-30	264	124	690	625	575	88	490	445	405	104	575	525	480
December	446	281	755	685	630	191	515	465	430	241	645	590	540
January	463	270	725	660	605	195	520	475	435	260	700	635	585
February	419	259	770	705	640	164	480	445	406	236	705	640	585
March 1-15	243	152	845	770	705	95	525	480	440	150	835	755	695
Total Without Fort Peck	6012	4208				2842				4242			

KW Hours per month Abstracted from Study PGOR-19B



[4943]

With Fort Peck plant remote from even the Garrison - Bismarck - Stanton load area, it is difficult to include that plant in the assessment of the firm power and energy capabilities of the main stem of the Missouri River and the associated power system.

In any case, in a dry year, it is most unlikely that the output from Fort Peck will be available outside of Montana. This means the firm supplies for that portion of the Basin which excludes Montana would amount to 2,842,000,000 kilowatt hours and the monthly distribution for the same three lowest years of record would be as given in Table III:

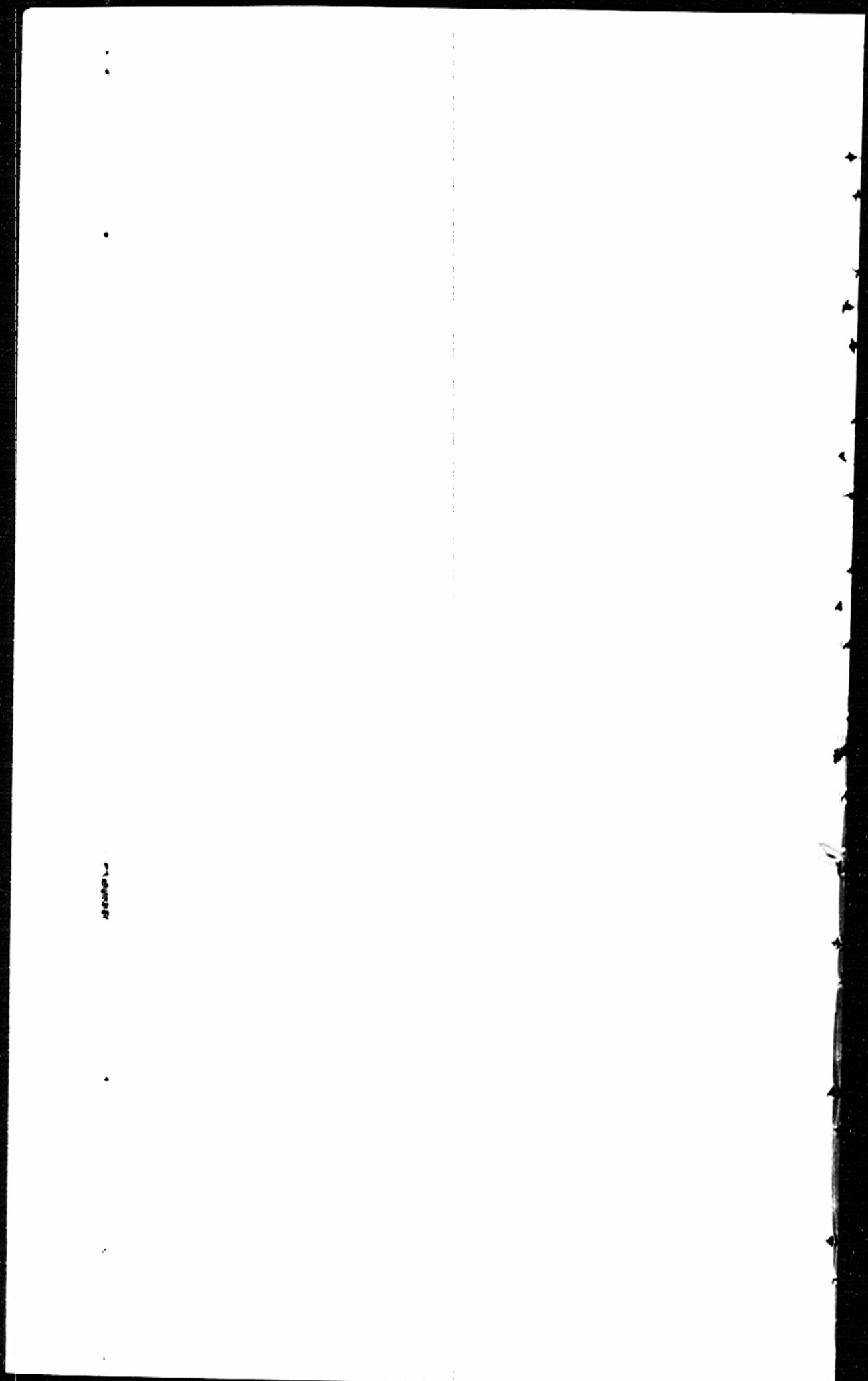
Table III - Acceptable Peak Load and Generation for 1933, 1937 and 1961 for Power Plants in the Missouri Basin Stem - without Fort Peck.

The maximum one hour sustained aggregate peak load demand on power plant busbars - excluding Fort Peck - for different monthly load factors and for summer and winter respectively, will be:

	<i>Maximum one hour capability</i>	
	<i>Summer</i>	<i>Winter</i>
<i>Historical Year 1933</i>	<i>July MW</i>	<i>December MW</i>
Monthly Load Factor 50 %	1,275	755
Monthly Load Factor 55 %	1,160	685
Monthly Load Factor 60 %	1,060	630
<i>Historical Year 1937</i>		
Monthly Load Factor 50 %	810	515
Monthly Load Factor 55 %	735	465
Monthly Load Factor 60 %	675	430
<i>Historical Year 1961</i>		
Monthly Load Factor 50 %	1,170	645
Monthly Load Factor 55 %	1,065	590
Monthly Load Factor 60 %	975	540

TABLE IV - MONTHLY LOAD FACTORS ASSOCIATED WITH CLAIMED PEAKING CAPABILITY - INCLUDING FORT PECK

	Average 1898-1965		1933		1937		1961	
	Monthly % LF	Average MW	Monthly % LF	Average MW	Monthly % LF	Average MW	Monthly % LF	Average MW
March 16-31	31.3	667	28.5	528	26.8	446	29.4	610
April	33.8	719	34.0	708	30.5	520	33.3	693
May	34.6	733	29.8	615	30.4	494	30.6	645
June	35.2	750	35.6	728	27.7	446	22.9	455
July	42.9	905	34.1	675	29.0	452	32.3	625
August	43.8	921	27.6	525	24.6	388	27.1	502
September	40.2	832	27.8	522	20.1	317	26.1	478
October	37.5	765	22.1	421	16.8	269	21.7	407
November 1-15	37.4	759	21.8	417	17.3	278	22.2	420
November 16-30	41.2	830	22.7	439	17.8	289	22.2	423
December	36.5	747	23.4	461	17.8	292	23.0	444
January	37.0	768	23.3	465	17.9	298	23.2	454
February	36.2	762	22.7	458	17.5	295	22.1	440
March 1-15	37.3	788	22.8	458	17.3	295	22.8	453
Annual, based on:								
(a) Max. Capability	37%		26%		21%		27%	
(b) Min. Capability	40%		29%		23%		31%	



[4945]

As in the case of Table II, if the summer peak load demand occurs in August, these one hour capabilities, according to PGOR-19-B, will be reduced quite appreciably. Probably it will be possible in such an eventuality to reduce releases in July and increase those in August.

Following the usually accepted definition of "Firm Power and Energy" by consumers of electrical energy, it is difficult to ignore the historical record and use any other values than those for 1937. The 7.3 billion of kilowatt hours claimed as firm for 1966 energy is misleading unless it is qualified to indicate clearly that this applies to a three year period, and would not necessarily be available in the fourth year if the water supplies of the intervening years are below the 68 year average to any appreciable extent.

6. *MEANING OF MISSOURI BASIN PEAKING CAPABILITY*

To make use of the peaking capability given in PGOR-19B, including Fort Peck and summarized on Page 24, the annual and monthly load factor operation would be as given in:

Table IV - Monthly Load Factors associated with Claimed Peaking Capability, Including Fort Peck.

It is difficult to see how any power can be sold up to capability unless the Missouri Basin Systems Group or the USBR contracts for outside supplies of base load power and energy, mainly energy to permit the Missouri hydro plants to operate on a low monthly and annual load factor.

It has been assumed in Table IV that the capability will fact be available as given in PGOR-19B. It is suggested that these capabilities be reviewed with the proper allowance made for (a) reduction in turbine output and efficiency at the lower heads and (b) for the necessity of maintaining constant releases during the winter, below Fort Peck and Gavin's Point, which may be necessary to keep intact the sheet of ice on the river.

7. MONTHLY DISTRIBUTION OF ENERGY

In its letter of December 22, 1965, the USBR provided the details of the monthly distribution of energy over the year. This requested distribution compares with the generation evaluated on Page 24 of Study PGOR-19B as follows:

Month	USBR %	Average 1898-1965 %	1933 %	1937 %	1961 %
January	8.4	8.3	7.26	6.8	6.8
February	7.5	7.5	6.5	6.2	6.05
March	8.2	7.75	7.7	8.8	8.0
April	7.7	7.5	10.75	11.5	10.1
May	8.1	7.9	9.6	11.3	9.7
June	8.6	7.8	11.0	9.9	6.6
July	10.0	9.75	10.55	10.35	9.4
August	9.4	9.95	8.2	8.7	7.5
September	8.7	8.69	7.8	7.05	6.9
October	7.6	8.27	6.6	6.2	6.1
November	7.6	8.27	6.65	6.3	6.1
December	8.2	8.1	7.2	6.72	6.7

There is an appreciable divergence of the distribution of the monthly energy over the year in Study PGOR-19B as compared with that requested by USBR in December 1965. It is this divergence which has produced the higher load capability values for the months of April, May and June as compared with July and August in Tables II and III. There may be no real significance in this divergence and it may be that the regulation of the river and releases from storage would permit the necessary adjustment over the year to make the distribution of energy agree with the USBR letter.

8. BASIC SYSTEM LAYOUT

The main transmission system has been built for 230 KV operation. Having regard to the distance and the blocks of

power, the system can be expected to split into sections on the occurrence of a fault or a system disturbance or other system instability by the opening of the following lines:

- (a) Fort Peck - Dawson County, or Dawson County - Yellowtail, or Dawson County - Bismarck.
- (b) Bismarck - Oahe
- (c) Fort Randall - Columbus

[4947]

- (d) Hayden - Archer - Stegal - New Underwood - Oahe is 519 miles long and if operated connected would be expected to open or to lose connection at one end or the other with generating source.

Thus, in essence, the system will comprise the following sections or areas, each self sufficient normally and possibly even so when the system splits up:

- Zone 1* Fort Peck - Yellowtail - Canyon Ferry. Only exhaustive stability studies will determine whether even this zone can ride through the incidence of a transient disturbance somewhere on the system. Total nameplate capacity 465 MW. The Fort Peck peaking capability will be reduced by about 100 MW for 1937 conditions and presumably comparable reductions can be expected for Yellowtail and Canyon Ferry.
- Zone 2* Garrison - Bismarck - Stanton. The aggregate peak capability (but not necessarily firm peak capacity) amounts to 680 MW; and with addition of UPA and Minnkota steam plants amounts to 1005 MW; and with the proposed Basin Electric addition of a 400 MW set amounts to 1405 MW. Based on PGOR-19B, the Garrison peaking capability will be reduced by at least 130 MW for 1937 conditions.
- Zone 3* Oahe - Big Bend - Fort Randall - Gavins Point. The aggregate peak capability (but not neces-

[4947-4948]

sarily firm peak generating capacity) amounts to 1613 MW. Based on PGOR-19B, the aggregate peak capability for 1937 conditions will be reduced by at least 500 MW.

9. *STABILITY LIMITS AND REGIONAL BLACKOUTS*

With the peaking capabilities outlined in PGOR-19B, the system can be expected to break up into sections, because the transmission line links between zones are inadequate. Unless the system is designed to retain stability and ride through a disturbance with only the faulty section isolated, regional blackouts are inevitable.

Without a transmission system having adequate transient stability, the peaking capabilities evaluated in PGOR-19B become illusory and if made use of, only increase the probability of regional blackouts, with the attendant and consequent possibility of serious damage to plant in the adjoining systems.

It is most desirable that the transient stability studies made by the Missouri Basin Systems Group and the USBR for various loading conditions be made available to each and every system and utility connected with the Missouri Basin or the USBR, in order that these systems and utilities may

[4948]

assess the risk of blackouts, and consider the means and the cost of protection to their own respective systems.

10. *SEASONAL EXCHANGE OF POWER*

There undoubtedly should exist good justification for seasonal exchanges of peak power, northwards to meet the winter peak, and southwards to meet the summer peak. However, to make this realistically possible, the transmission system will have to be designed and built to:

- (a) Provide stability in the interconnection, because the inevitable opening of the Bismarck - Oahe line, or the Fort Randall - Columbus line, eliminates any possible benefits.

- (b) Provide stability and efficient transmission facilities for the exchange of some 500 MW over a distance of about 570 miles in either direction.

At present, each sectional system has been designed and built to transmit power eastwards. A transmission link to provide this seasonal exchange will be at right-angles, and if installed will have to ensure that the stability within each Basin Group section is enhanced and not affected adversely. Without having adequate running capacity in the south to increase stability limits, such transmission facilities could be rather costly.

Study of Tables II and III, shows that the peak generating capacity is in April - May - June. Further, there is a difference between the maximum generating capacity in July and that in December of some 300-400 MW. If this is indeed the case, it is difficult to see how the seasonal exchange north - south and vice versa, can be made use of, because the possibility will be aggravated by each utility, quite naturally, having its largest unit out of service for annual maintenance during the period of minimum load on its own system, which for the north means July and for the south means December.

11. PROBABLY FIRM CAPACITY, ENERGY AND PEAKING CAPABILITY

For the Missouri Basin System this is predicated on the nature of the transmission system, and specially the nature of the ties between sections of the system as a whole. Stability studies will show different values for such tielines for 345 KV with one circuit, another value for two 345 KV circuits, probable a higher value for one 500 KV circuit and a higher still for two 500 KV circuits.

[4949]

Yet again, the amount of running plant under load in the south will affect appreciably the stability limits under each one of the above conditions.

12. THE MOUNTAIN-MIDWEST POWER POOL

The Mountain-Midwest Power Pool will consist of hydro-electric and steam generating plants situated in western Colorado, together with the necessary transmission lines to convey the power to users in the State of Nebraska, parts of Kansas and other neighbouring states. The several generating installations hereinafter described, are contractually integrated and will operate on a totally co-ordinated basis to make maximum economic use of western Colorado hydro and coal resources for the generation of power to be provided to users at reasonable and attractive rates.

The three following described entities comprise the initial membership of the Pool:

Rocky Mountain Power Company

This Colorado corporation holds water rights which will permit it to impound, use and conserve, portions of the annual runoff from the South Fork of the White River and the Sweetwater Creek drainage areas to generate power and after said waters have served their power producing function in the Company's pumped-storage plants, to provide a regulated water supply on a firm basis for oil shale and related uses in western Colorado.

The main storage reservoirs are at Meadows and downstream on the South Fork of the White River; the pumped storage plants with their respective afterbays or tailwater ponds are at Sweetwater Lake and on the South Fork. More than 3,000,000 KW will be generated by these pumped-storage installations.

A head of about 1,450 feet is available between the forebay and afterbay reservoirs at both Sweetwater and Lost Solar. Each of these plants will be connected by tunnels with the main storage at Meadows and the arrangement is such that water can be pumped back to Meadows for storage when not required to meet deliveries for sale or for fish and game.

[4950]

The hydroelectric generating units to be installed will run as electrically driven pumps during the night hours and weekends, and thus will absorb the difference in the power between the full load capacity of the steam turbines and the actual load. During these hours, water will be pumped from the lower or afterbay reservoirs to the upper or forebay reservoirs of the hydro plants and when they are full the additional storable water will be moved to Meadows.

The Rocky Mountain Power Company's application before the Federal Power Commission is for an initial capacity of 400 MW in four units and supplemental applications will be filed as the regional load demands increase in additional pumped-storage peaking or emergency capacity.

A panoramic sketch of the project is attached.

Oak Creek Power Company

This company will build a coal-fired steam power plant in the Trout Creek valley in Routt county. A reserve of some 35,000,000 tons of good quality sub-bituminous coal for the exclusive use of the Oak Creek Power Plant has been contracted. Reserves of additional coal adjacent to the plant are adequate to produce steam for a plant of 3,000,000 KW or more. Water supplies are also adequate to support a base load steam plant of this size.

The Oak Creek Power Plant will be connected with the Sweetwater pumped-storage plant of the Rocky Mountain Power Company, by a 42 miles transmission line. This allows the Oak Creek steam turbines to run continuously at an almost constant output at near the design rating.

[4950-4951]

East-West Intertie Inc.

This Corporation will construct the power lines and facilities for transmitting power between Oak Creek and Sweetwater, for returning water to its forebays or upper reservoirs; and between Sweetwater and Oak Creek when Sweetwater is generating the extra power required by the day load; and from Oak Creek and Sweetwater to the nuclear power plant on the Missouri River and the major baseload users in Nebraska and other neighbouring States.

[4951]

The transmission system has been designed for 500,000 KV and will be co-ordinated with the generating plants at Sweetwater and Oak Creek and the nuclear plant on the Missouri River to ensure the maximum possible stability to avoid blackouts. Temporary operation at lower voltages of 230 KV and 345 KV is envisaged while the load is growing.

Stage Construction

The total construction cost of the three entities with some 900 MW installed by Rocky Mountain and 1,500 installed by Oak Creek, including related transmission facilities to be constructed by each entity have been designed to permit development and construction in stages over a period of about ten years. In this plan, every stage and extension will be technically and economically feasible.

Further construction to increase the aggregate generation capacity above 2,400 MW (900 MW hydro and 1,500 MW steam) will present no problems and will in fact reduce the capital cost of the overall facilities.

Water Resources

The decreed water which can be made available on a firm basis to the communities and industries west of the Continental Divide amounts to more than 150,000 acre feet

[4951-4952]

per annum, after the various requirements for fish and game and stream cleansing have been met. This becomes available with the construction of the various reservoirs and works as proposed by Rocky Mountain Power Company.

After the water has performed the power generation function in the pumped-storage plants, this water will be pumped and conveyed by pipeline to a holding and balancing reservoir in the Piceance Basin. Water will then be delivered from this reservoir to the industries and communities in the Piceance and Parachute Creek oil shale areas. Without this water the development of the oil shale industry will be seriously jeopardized, if not blocked.

[4952]

13. *BASIS OF DESIGN OF MOUNTAIN-MIDWEST POWER POOL*

The system is a whole and each of the constituent entities of the Pool has been designed to allow construction in stages with each stage economically feasible. The basic design is for power exchanges in either direction from east to west and from west to east. This means that the system will provide the facility for the large nuclear plant on the Missouri River and the large coal fired plant at Oak Creek to operate at or near capacity during the months they are on load each year, thus providing far greater and more tangible and realistic benefits than the seasonal exchange of capacity between the north and south of the Region if such seasonal exchange is at all feasible.

The initial stage of installations of the Consumers Public Power District and Mountain-Midwest Power Pool will comprise probably 800 MW of nuclear plant on the Missouri and 400-600 MW of pumped storage capacity and 600 MW of thermal capacity at Oak Creek.

[4952-4953]

The site of the nuclear plant of Consumers Public Power District has adequate cooling water facilities for a 2,500 MW plant; the reserves of coal and supplies of water at Oak Creek are adequate to assure security to continuous base-load operation of a thermal plant above 3,000 MW capacity; the topography, the reservoirs, and the ownership of the water by Rocky Mountain Power Company assure this pumped-storage facility a capability at all times in excess of 3,000 MW in a cycle which includes weekend pumping.

Interconnection of the Missouri Basin Systems Group with the combined systems of Consumers Public Power District and the Mountain-Midwest Power Pool, means:

- (a) Connection with an East-West power system having a backbone with an aggregate initial firm power capacity - not capability - of at least 1800 MW.
- (b) Connection with a power system having an aggregate firm power potential capability in excess of 8,500 MW.
- (c) Connection with a power system whose separate and joint facilities have been designed to meet the accepted system stability criteria usually considered necessary to minimize, if not eliminate, regional blackouts except through Acts of God, sabotage, or incompetence.

A sketch map is attached and shows the electrical systems of the Missouri Basin Systems group and the Mountain Midwest Power Pool interconnected with Consumers Public Power District.

[4953]

14. *BENEFITS FROM INTERCONNECTION*

- (a) *Benefits to Mountain-Midwest Power Pool and Consumers Public Power District*
 - (1) Availability of power and energy to the Missouri Basin Systems Group to meet the deficiencies between contracted commitments for delivery of

firm power and energy and the actual long term firm power and energy available from the Missouri River power plants. These deliveries can most effectively be made to the southern portion of the MBSG system.

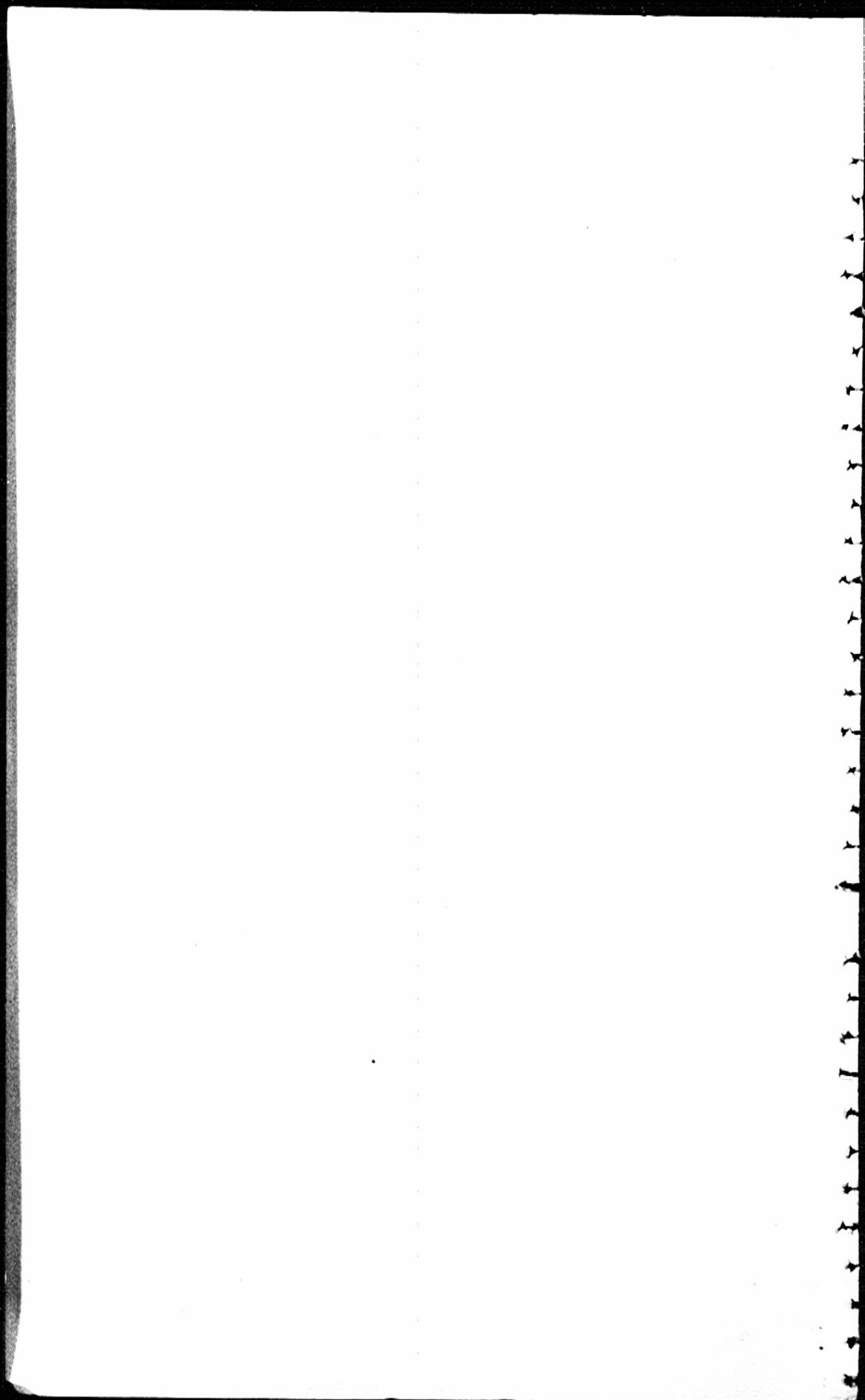
- (2) Spinning reserve and spinning capacity which would help in riding through a system disturbance thus raising stability limits. However, as of this moment, this benefit could be non-existent because of the nature and designed layout of the USBR and the other group members' transmission systems.

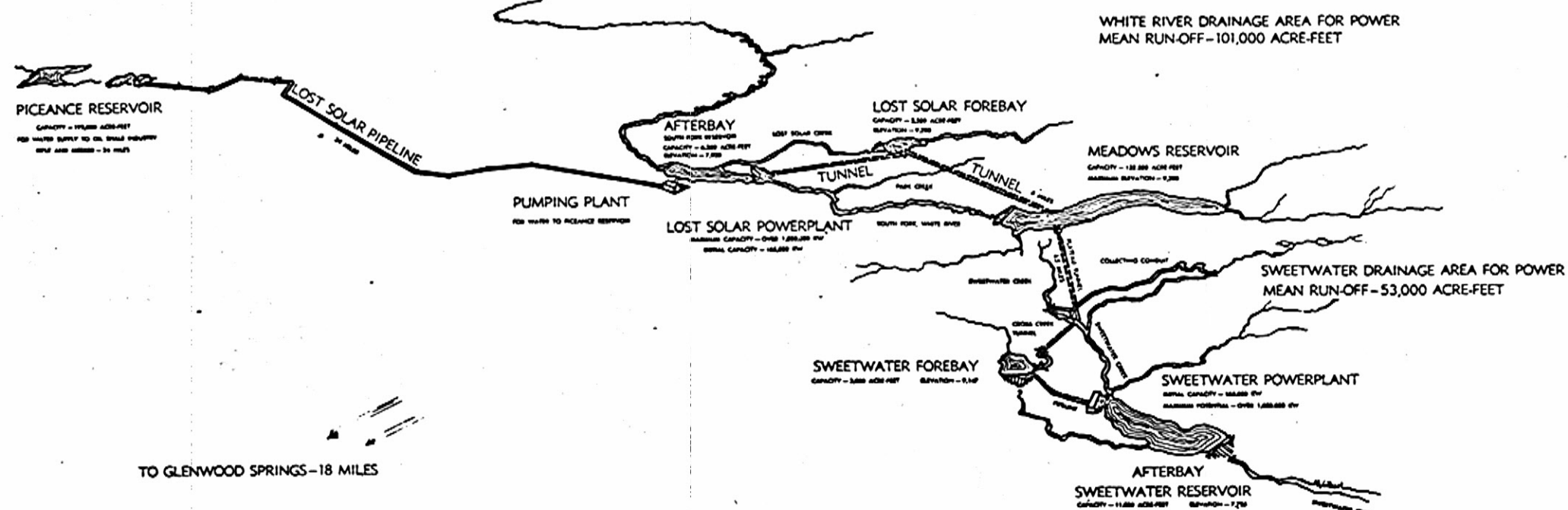
(b) *Benefits to the Missouri Basin Systems Group*

These would be many and only some of the major ones are enumerated below:

- (1) Interconnection with a system designed and planned for a much larger capability and with system stability controlled, will greatly enhance the stability of the Missouri Basin System and make it less costly for the MBSG respective systems to reduce, if not eliminate, the risk of regional blackouts by making their systems more reliable and stable.
- (2) MBSG members will be able to enter into truly long term contracts of well over four years for the supply and delivery of firm power and energy from their facilities.
- (3) It will not be necessary to use a definition of firm power and energy different from the usual and normal interpretation.
- (4) MBSG will be able to benefit from the combined Consumers and Mountain-Midwest Power Pool's ability to import and export reactive power and this should also increase the reliability of the MBSG and their members' systems.

- (5) MBSG will be in a position to import power and energy, particularly the energy which MBSG lacks, from plants based on the lignite fields in the north, the sub-bituminous coal fields of Colorado in the south, and the nuclear plant of the Missouri River if Consumers have any energy surplus to their requirements. This will reduce the distances of transmission of this firming-up energy.
- (6) The preference customers of the USBR, the various co-ops and other utilities, can be assured of supplies of firm capacity and energy, unaffected by the years of drought.
- (7) Some of the long transmission lines will have their use changed from that in the original authorization to serve the more useful purpose of full capability subtransmission lines; this makes better use of the capital committed to their construction.
- (8) MBSG will not have to search for power and energy in a year of drought, at a time when there can be no surplus of power and energy anyway - certainly not of the order of a five billion kilowatt hour deficiency, which will have to be made good.
- (9) The 500 - mile long or 705 - mile long transmission line presently proposed by the USBR to Kansas can be replaced by another line, and a shorter line, which can take off from a suitable switching station of the combined Consumers - Mountain-Midwest Power Pool facilities. The power and energy can be supplied to the preference customers in the south (Kansas, etc) by exchange, by replacement, or by purchase from the combined system of the Mountain-Midwest Power Pool and Consumers. Such a plan will not increase, but should reduce, the risk of regional and interstate system instability and regional blackouts.





ROCKY MOUNTAIN POWER CO.

SWEETWATER HYDROELECTRIC PROJECT

A DEVELOPMENT FOR PEAKING CAPACITY

BASED ON

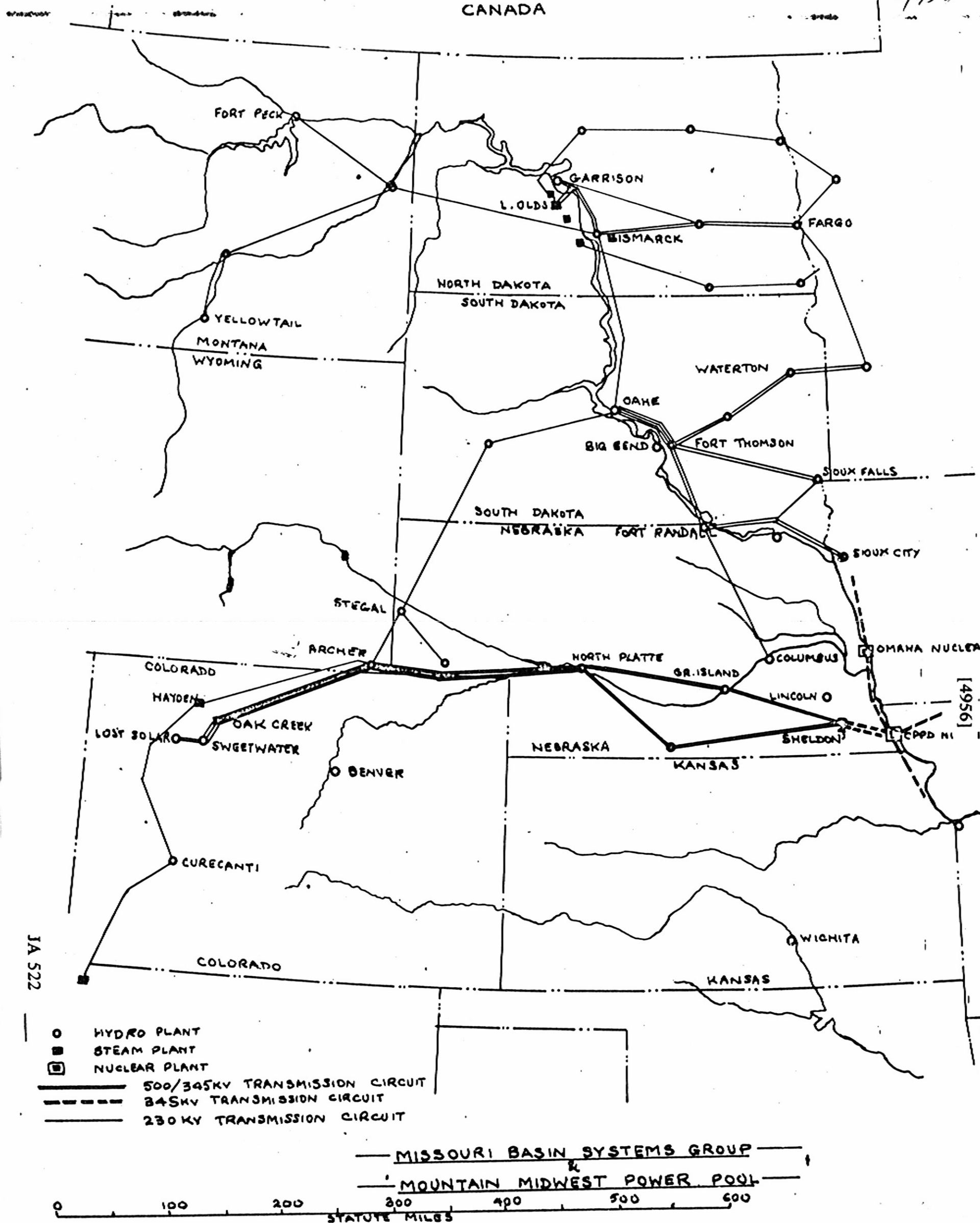
PUMPED-STORAGE GENERATION - SUPPLEMENTED BY STORED RUNOFF

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SUPPLEMENTAL MEMORANDUM

INTERCONNECTION AND COORDINATED POOL OPERATION

between

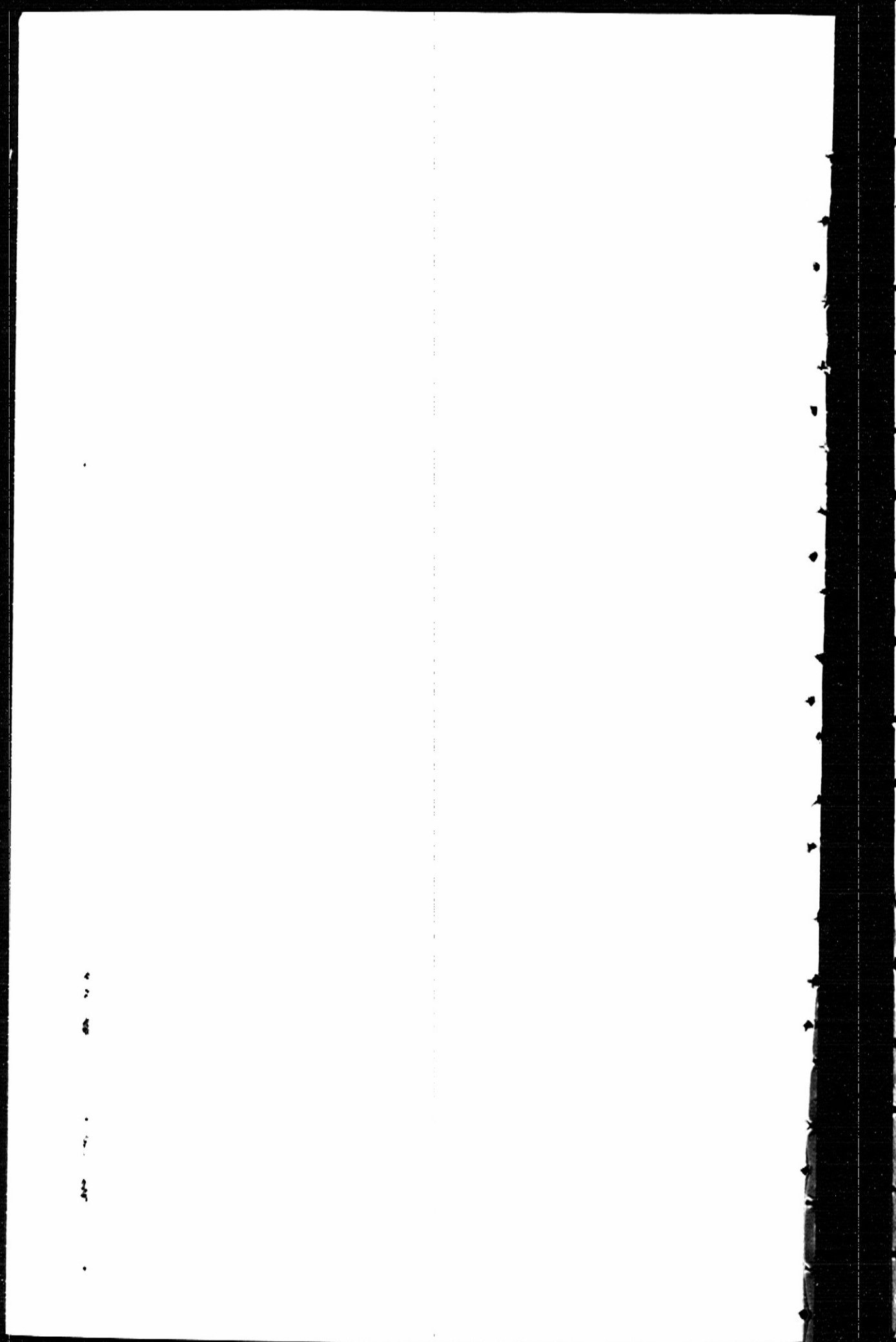
MISSOURI BASIN SYSTEMS GROUP

and

MOUNTAIN- MIDWEST POWER POOL

Rocky Mountain Power Co.
Denver, Colorado

December 1966



[4958]

SUPPLEMENTAL MEMORANDUM
on
INTERCONNECTION AND COORDINATED
POOL OPERATION
between
MISSOURI BASIN SYSTEMS GROUP
and
MOUNTAIN-MIDWEST POWER POOL

Introduction

The Memorandum dated November 1966 set out the basic data and the operational parameters of the Missouri Basin Systems Groups as covered by Study PGOR-19B. Study PGOR-19B explores the possible operation of the reservoir projects on the main stem of the Missouri River during a recurrence of the hydrological period from 1898 to 1965 inclusive and with the basin development at the programmed 2020 level which includes 6,097,000 acre feet annual depletions to meet irrigation demands and an annual adjusted water supply at Sioux City from 1898-1965 inclusive of 24,100,000 acre feet.

The present Supplemental Memorandum has reappraised the basic data and the operational parameters as covered by Study PGOR-19A. Study PGOR-19A explores the possible operation of the same projects with the basin development of the programmed 1970 level which includes 745,000 acre feet annual depletions to meet irrigation requirements and with an annual adjusted water supply at Sioux City from 1898-1965 inclusive of 24,200,000 acre feet.

The introduction to the Memorandum dated November 1966 applies equally to this Supplemental Memorandum.

The substance of the November Memorandum remains unchanged, and this Supplemental Memorandum gives only the tables and figures as based on PGOR-19A, together with an appropriate comment.

[4958]

Thus the November Memorandum indicates how the firm energy deficiencies will grow in a fifty year period from the firm energy deficiencies given in this December Supplemental Memorandum, which shows the 1970 level of development of the basin if the historical stream flow record recurs.

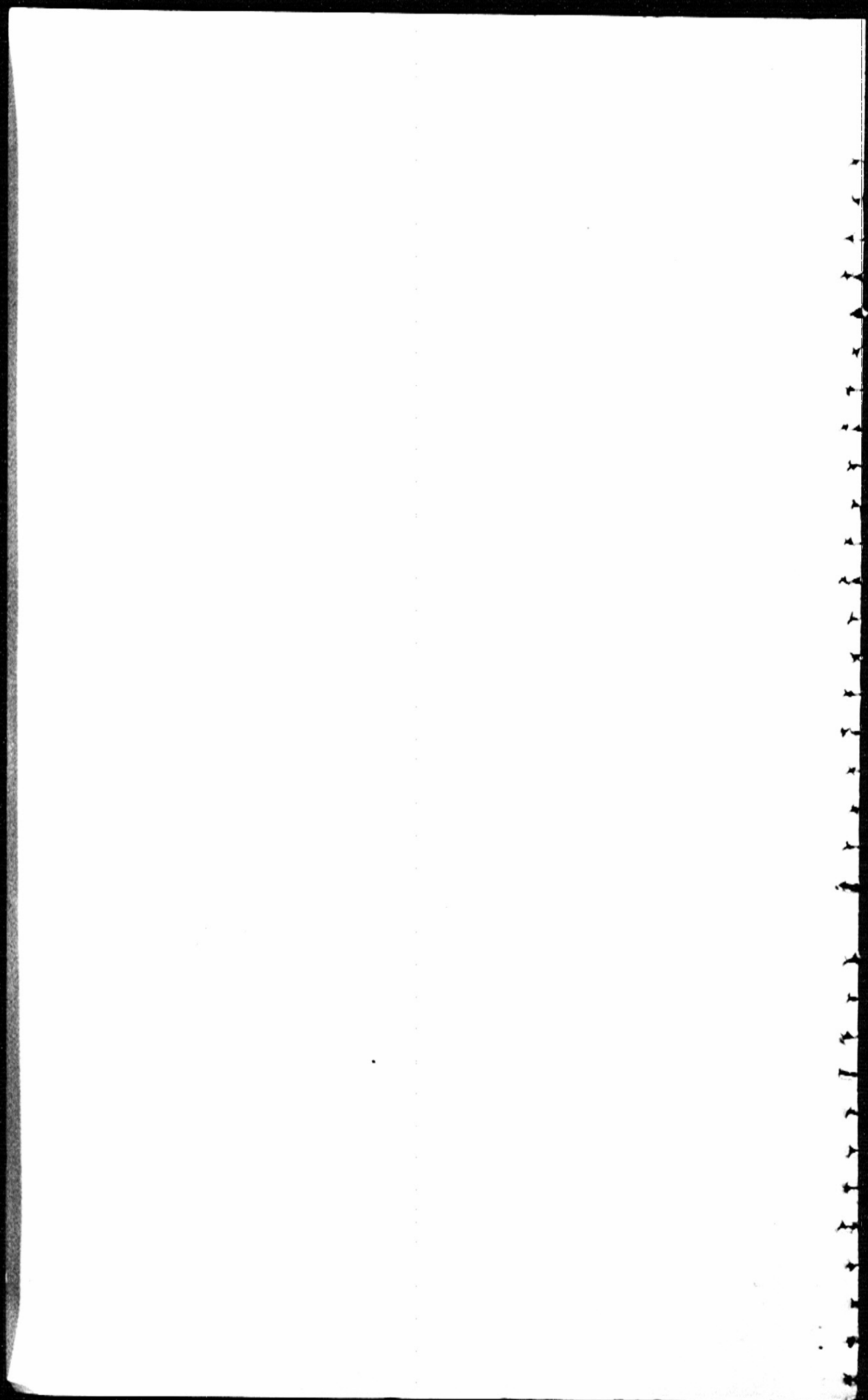


TABLE I-A - PEAK LOAD AND ENERGY FOR 68 YEAR AVERAGE AND FOR 1933, 1937 & 1962
FOR POWER PLANTS ON MISSOURI MAIN STEM

Plant	68 Year Average		1933		1937		1962	
	Peak Load MW @ 55% LF	Energy Million KWH	Peak Load MW @ 55% LF	Energy Million KWH	Peak Load MW @ 55% LF	Energy Million KWH	Peak Load MW @ 55% LF	Energy Million KWH
Fort Peck	211	1016	152	733	96	462	150	724
Garrison	465	2242	376	1812	227	1092	356	1717
Oahe	550	2653	411	1977	279	1344	295	1425
Big Bend	221	1067	182	881	151	729	114	548
Fort Randall	331	1595	277	1336	229	1106	225	1084
Gavin's Point	128	616	116	559	98	473	104	502
Total with Fort Peck	1906	9189	1514	7301	1080	5206	1244	6000
Total without Fort Peck	1800	8222	1362	6568	984	4744	1094	5274

Based on PGOR-19A. In this study 1962 was worse than 1961 in PGOR-19B, and therefore 1962 figures are given in this table.

1

2

[4960]

5. *FIRM CAPACITY AND ENERGY FROM MISSOURI
RIVER PROJECT*

(Reference Page 5 of November 1966 Memorandum.)

Based on PGOR-19A data table I would read as shown
in Table I-A:

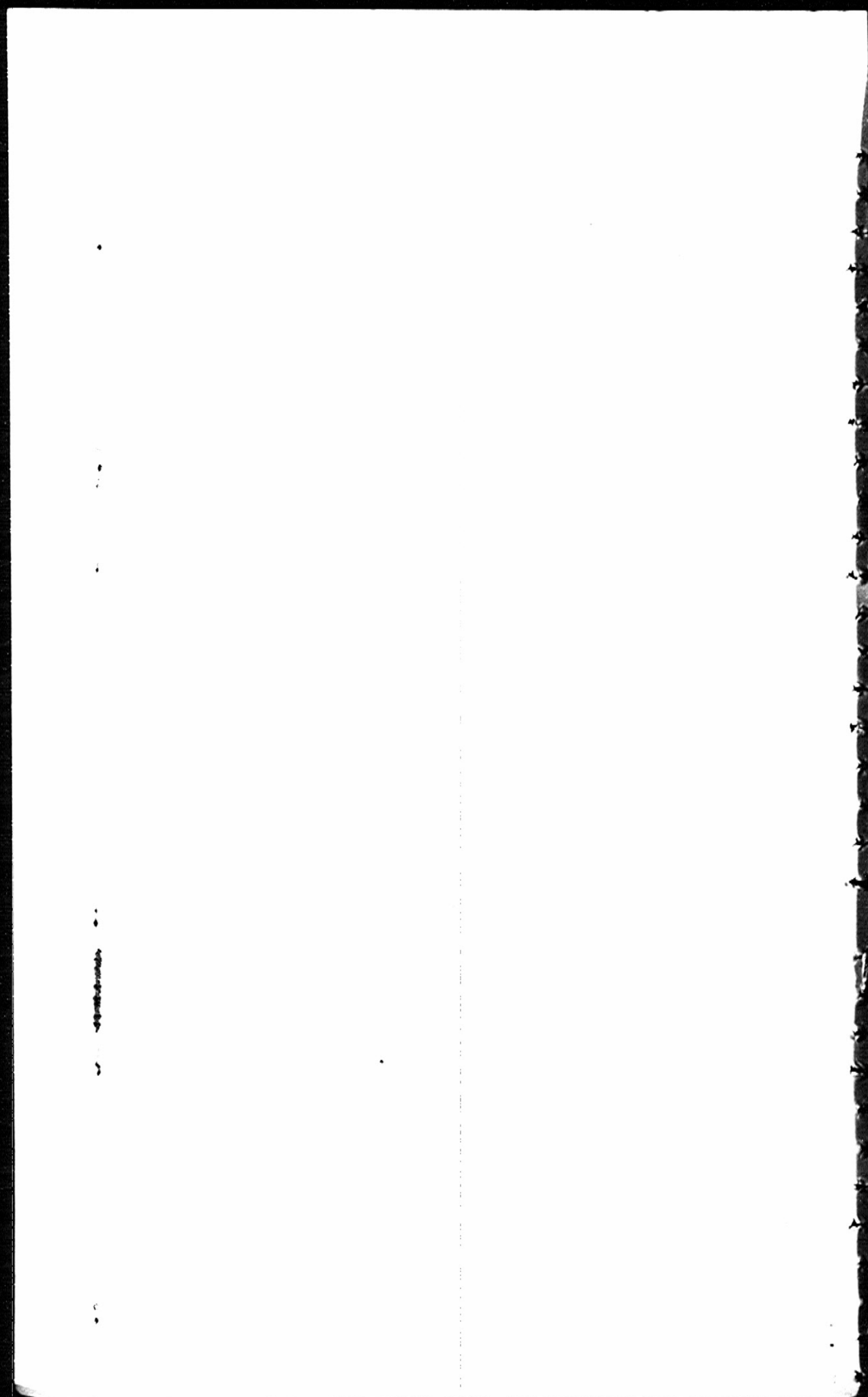
Table I-A - Peak Load and Energy 65 Years Average
and for 1933, 1937, and 1962 for Power
Plants on Missouri Main Stem.

1962 is given in this table because it is worse than
1961.

**TABLE II-A - ACCEPTABLE PEAK LOAD AND GENERATION FOR 1933, 1937 & 1962
FOR POWER PLANTS ON MISSOURI MAIN STEM, INCLUDING FORT PECK**

Month & Period	Average 1938 to 1965 Million KW Hrs	1933				1937				1962			
		Million KW Hrs	Monthly Peak Load In MW based on LF			Million KW Hrs	Monthly Peak Load In MW based on LF			Million KW Hrs	Monthly Peak Load In MW based on LF		
			50%	55%	60%		50%	55%	60%		50%	55%	60%
March 16-31	350	282	1060	1340	1230	236	1230	1120	1025	228	1190	1080	990
April	699	544	1510	1375	1260	427	1185	1077	985	415	1150	1050	960
May	756	549	1475	1340	1230	470	1260	1150	1055	457	1225	1115	1020
June	774	593	1645	1495	1375	446	1240	1125	1035	449	1245	1135	1040
July	921	680	1825	1660	1525	515	1380	1260	1155	490	1315	1200	1100
August	918	744	2000	1820	1670	454	1220	1110	1020	488	1310	1190	1095
September	810	616	1710	1555	1430	400	1110	1010	920	462	1285	1165	1070
October	826	655	1760	1600	1470	416	1115	1015	930	467	1255	1140	1050
November	738	622	1725	1570	1440	387	1075	975	895	465	1290	1170	1075
December	738	623	1675	1520	1400	458	1230	1120	1025	638	1715	1560	1430
January	708	576	1545	1405	1290	425	1140	1040	955	611	1640	1495	1370
February	632	555	1650	1505	1385	373	1110	1010	925	548	1630	1490	1365
March 1-15	319	262	1455	1320	1210	198	1100	1000	915	282	1560	1420	1300
Total with Fort Peck	9189	7301				5206				6000			

KW Hours per month abstracted from Study PGOR-19B. 1962 is given because it is worse than 1961.



[4962]

(Reference Page 6 of November 1966 Memorandum.)

Similarly, to meet the usually accepted and more realistic definition of Firm Capacity and Energy Table II, if based on Study PGOR-19A, would read as given in Table II-A:

Table II-A - Acceptable Peak Load and Generation for 1933, 1937 and 1962 for Power Plants on the Missouri Main Stem, Including Fort Peck.

Historically, this means that without any other sources of power, the firm annual generation for the Missouri River Plant amounts to 5,206,000,000 kilowatt hours for the 1970 level of development and this will decrease gradually on account of silting and irrigation depletions to 3,247,000,000 kilowatt hours for the 2020 level. The corresponding summer and winter firm power capabilities on power plant bus-bars will be:

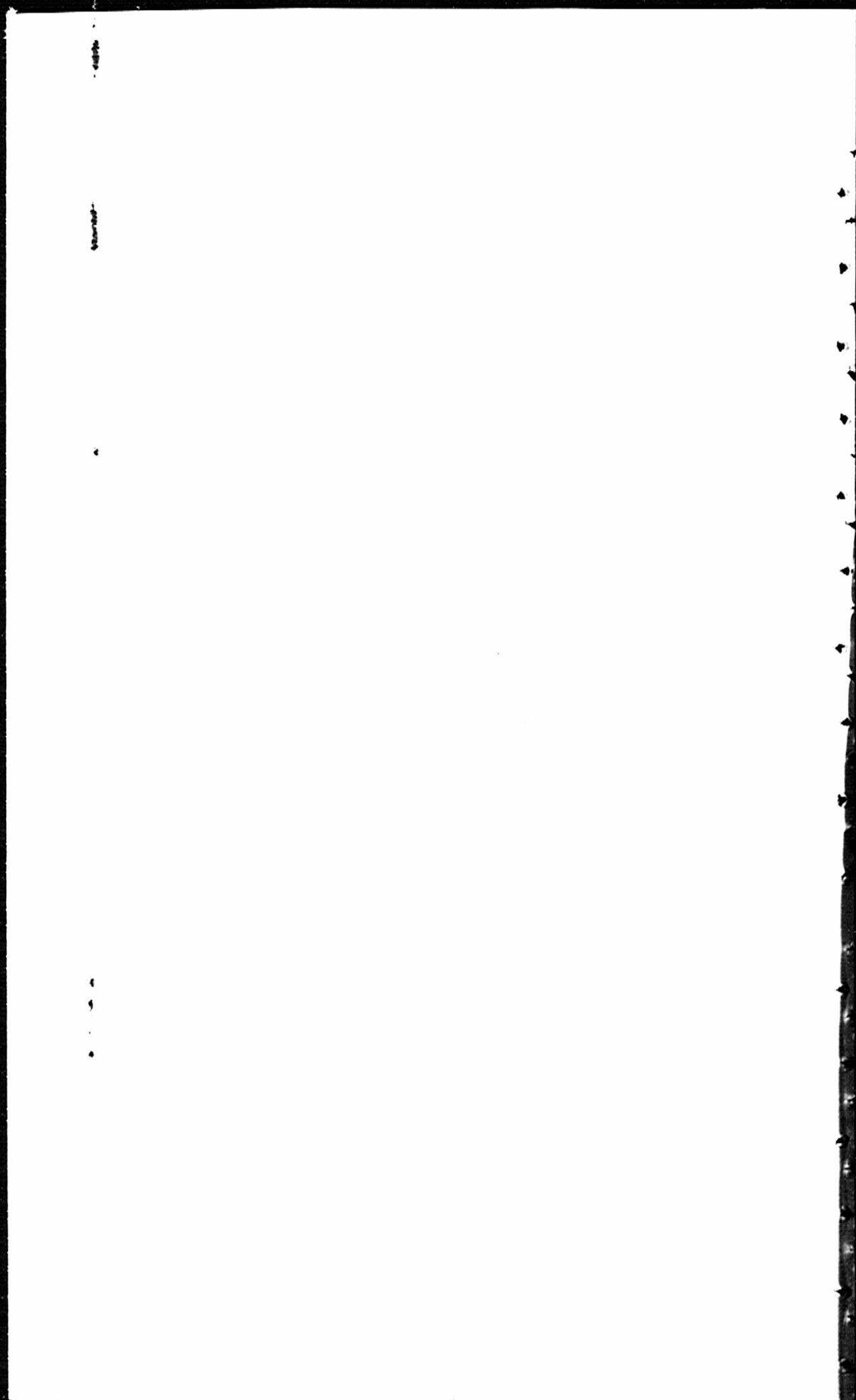
Maximum one hour capability in MW

	<i>Summer, July</i>		<i>Winter, December</i>	
	<i>1970 level</i>	<i>2020 level</i>	<i>1970 level</i>	<i>2020 level</i>
<i>Historical Year 1933</i>				
Monthly load factor 50%	1,825	1,355	1,675	925
Monthly load factor 55%	1,660	1,230	1,520	842
Monthly load factor 60%	1,525	1,125	1,400	770
<i>Historical Year 1937</i>				
Monthly load factor 50%	1,380	905	1,230	585
Monthly load factor 55%	1,260	825	1,120	535
Monthly load factor 60%	1,155	755	1,025	480
<i>Historical Years 1961</i>				
<i>& 1962</i>	<i>(1962)</i>	<i>(1961)</i>	<i>(1962)</i>	<i>(1961)</i>
Monthly load factor 50%	1,315	1,250	1,715	885
Monthly load factor 55%	1,200	1,135	1,560	810
Monthly load factor 60%	1,100	1,035	1,430	740

TABLE III-A - ACCEPTABLE PEAK LOAD AND GENERATION FOR 1933, 1937 & 1962
FOR POWER PLANTS ON MISSOURI MAIN STEM - WITHOUT FORT PECK

Month & Period	Average 1898 to 1965 Million KW Hrs	1933				1937				1962			
		Million KW Hrs	Monthly Peak Load In MW based on LF			Million KW Hrs	Monthly Peak Load In MW based on LF			Million KW Hrs	Monthly Peak Load In MW based on LF		
			50%	55%	60%		50%	55%	60%		50%	55%	60%
March 16-31	308	252	1310	1195	1095	213	1110	1010	925	200	1040	945	870
April	678	516	1430	1300	1195	406	1130	1020	940	389	1080	980	900
May	674	519	1395	1270	1160	448	1205	1095	1005	430	1155	1050	965
June	693	564	1565	1420	1305	425	1180	1070	985	421	1170	1060	975
July	846	628	1685	1535	1410	493	1325	1205	1105	370	990	905	830
August	842	687	1845	1685	1540	432	1160	1055	963	459	1205	1120	1030
September	749	587	1630	1480	1360	379	1055	955	875	434	1205	1095	1005
October	760	612	1640	1495	1370	394	1060	965	885	438	1175	1070	985
November	674	554	1540	1395	1280	367	1020	925	850	437	1215	1100	1010
December	623	517	1390	1260	1160	379	1015	935	850	528	1420	1290	1185
January	585	462	1240	1125	1035	342	920	835	765	493	1320	1205	1105
February	521	454	1350	1230	1130	301	895	815	730	443	1315	1200	1105
March 1-15	269	216	1200	1090	1000	165	915	835	765	234	1300	1180	1080
Total without Fort Peck	8222	6568				4744				5276			

KW Hours per month abstracted from Study PGOR-19A. 1962 given because it is worse than 1961.



[4964]

(Reference Page 7 of November 1966 Memorandum.)

Similarly based on PGOR-19A, Table III would read as given in Table III-A:

Table III-A - Acceptable Peak Load and Generation for 1933, 1937 and 1962 for Power Plants on the Missouri Main Stem - Without Fort Peck.

Thus, historically, the firm supplies for that portion of the basin which excludes Montana would amount to 4,744,000,000 kilowatt hours for the 1970 level of development and this will decrease gradually on account of silting and irrigation depletions to 2,842,000,000 kilowatt hours for the 2020 level. The corresponding summer and winter firm power capabilities on the power plant busbars will be:

	<i>Maximum one hour capability in MW</i>			
	<i>Summer, July</i>		<i>Winter, December</i>	
	<i>1970 level</i>	<i>2020 level</i>	<i>1970 level</i>	<i>2020 level</i>
<i>Historical Year 1933</i>				
Monthly load factor 50%	1,685	1,275	1,390	755
Monthly load factor 55%	1,535	1,160	1,260	685
Monthly load factor 60%	1,410	1,060	1,160	630
<i>Historical Year 1937</i>				
Monthly load factor 50%	1,325	810	1,015	515
Monthly load factor 55%	1,205	735	935	465
Monthly load factor 60%	1,105	675	850	430
<i>Historical Years 1961</i>				
<i>& 1962</i>	<i>(1962)</i>	<i>(1961)</i>	<i>(1962)</i>	<i>(1961)</i>
Monthly load factor 50%	990	1,170	1,420	645
Monthly load factor 55%	905	1,065	1,290	590
Monthly load factor 60%	830	975	1,185	540

TABLE V-A - ANNUAL GROSS GENERATION FROM 1925-1926
AFTER ALLOWING 745,000 ACRE FEET FOR IRRIGATION

Millions Kilowatt Hours

Year	Including Fort Peck	Excluding Fort Peck	Year	Including Fort Peck	Excluding Fort Peck
1925-26	11,570	10,366	1945-46	9,032	8,197
26-27	9,964	8,957	46-47	8,656	7,963
27-28	12,505	11,026	47-48	8,941	7,994
28-29	12,398	10,938	48-49	9,883	8,430
29-30	9,347	8,502	49-50	9,193	8,178
1930-31	9,818	8,836	1950-51	10,367	9,239
31-32	8,541	7,577	51-52	10,661	9,296
32-33	6,984	6,316	52-53	12,118	10,757
33-34	7,301	6,566	53-54	10,252	8,779
34-35	6,864	5,998	54-55	9,933	8,704
1935-36	5,997	5,438	1955-56	9,940	8,706
36-37	5,733	5,201	56-57	8,530	7,455
37-38	5,206	4,744	57-58	7,655	6,835
38-39	5,386	4,887	58-59	7,814	6,809
39-40	5,883	5,368	59-60	7,999	6,892
1940-41	5,512	5,006	1960-61	7,178	6,253
41-42	5,360	4,901	61-62	6,760	5,951
42-43	5,384	4,856	62-63	6,000	5,276
43-44	7,113	6,451			
44-45	7,733	6,923			

1970 level of development
Abstracted from Study PGOR-19A

The very sudden long period of drought in the 1930's which followed on the wet years of the 1920's would not have affected possible generation seriously until some three years later, namely 1932-33. Table V below gives the annual gross generation from 1925-26 to 1962-63 after allowing 6,097,000 acre feet for irrigation and reservoir silting (based on Study PGOR-19B) whilst Table V-A gives the annual gross generation for the same period up to 1964-65 after allowing 745,000 acre feet for irrigation.

**TABLE V - ANNUAL GROSS GENERATION FROM 1925-26
AFTER ALLOWING 6,097,000 ACRE FEET FOR IRRIGATION**
Million Kilowatt Hours

<u>Year</u>	<u>Including Fort Peck</u>	<u>Excluding Fort Peck</u>	<u>Year</u>	<u>Including Fort Peck</u>	<u>Excluding Fort Peck</u>
1925-26	9,225	8,223	1945-46	5,721	5,050
26-27	7,094	6,261	46-47	5,672	5,090
27-28	11,052	9,626	47-48	7,088	6,217
28-29	10,149	8,885	48-49	8,746	7,327
29-30	8,158	7,366	49-50	7,225	6,362
1930-31	6,504	5,734	1950-51	7,293	6,364
31-32	5,458	4,647	51-52	8,055	6,916
32-33	6,798	6,221	52-53	9,961	8,854
33-34	4,771	4,208	53-54	8,854	7,434
34-35	4,013	3,369	54-55	6,530	5,535
1935-36	3,606	3,175	1955-56	5,801	5,003
36-37	3,533	3,085	56-57	5,673	4,870
37-38	3,247	2,842	57-58	5,393	4,607
38-39	3,419	2,933	58-59	5,523	4,588
39-40	3,583	3,139	59-60	5,493	4,552
1940-41	3,404	2,960	1960-61	5,258	4,164
41-42	3,350	2,988	61-62	4,458	3,746
42-43	3,327	2,845	62-63	5,033	4,162
43-44	4,835	4,298	63-64	5,628	4,973
44-45	5,861	5,113	64-65	5,604	4,890
Abstracted from Study PGOR-19B; 2020 level of development.					

The annual averages in millions of kilowatt hours during the years of drought are:

<u>Period</u>	<u>No. of Years</u>	<u>PGOR-19A; 1970 level</u>		<u>PGOR-19B; 2020 level</u>	
		<u>with Fort Peck</u>	<u>without Fort Peck</u>	<u>with Fort Peck</u>	<u>without Fort Peck</u>
34/35-42/43	9	5,703	5,156	3,498	3,037
31/32-42/43	12	6,179	5,571	4,042	3,534
31/32-44/45	14	6,357	5,731	4,229	3,702

[4967]

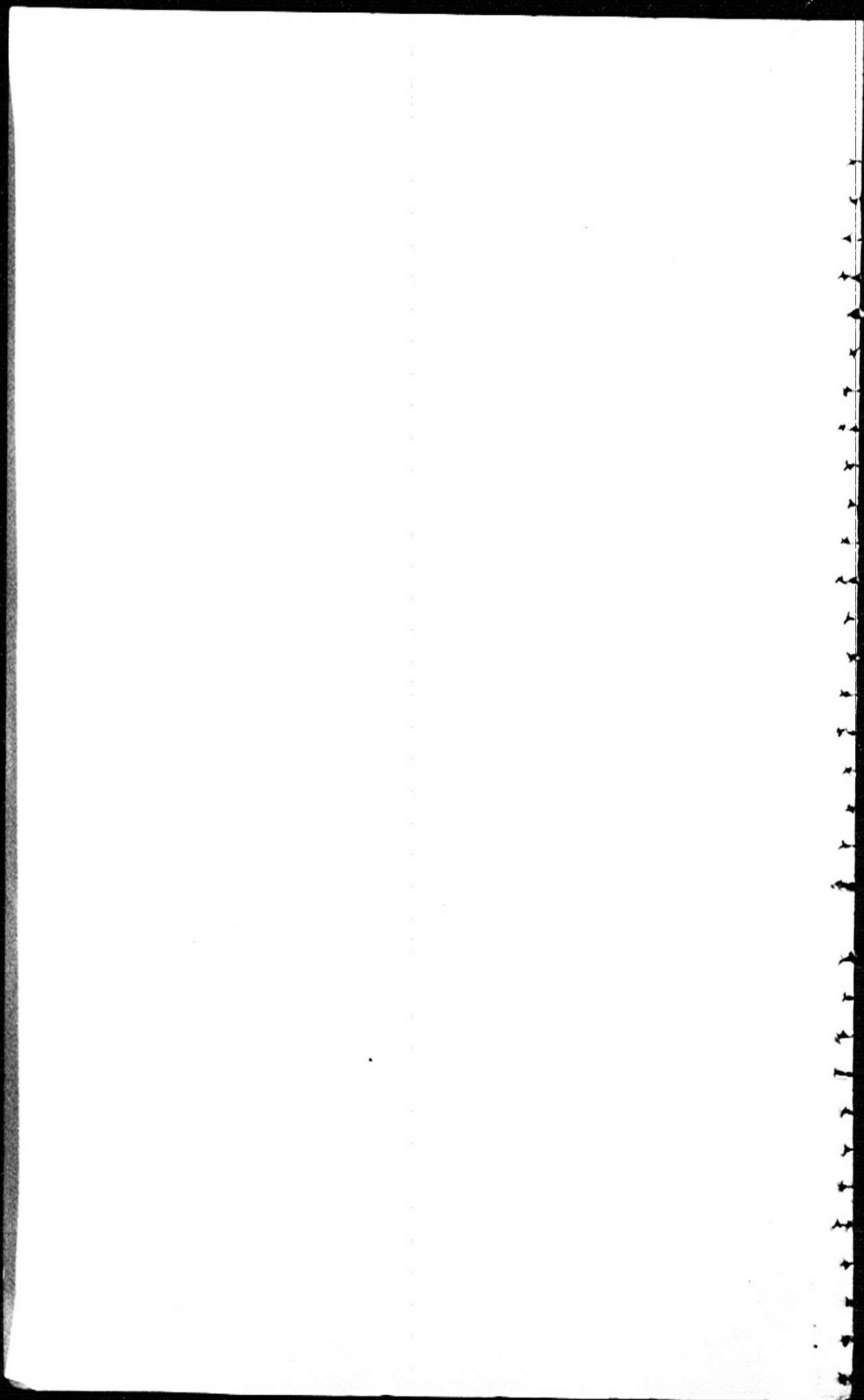
[4967]

Reference Page 8 of November 1966 Memorandum

Paragraph (8)

(8) If the firm power and energy is to approach the total generation given in the summary reports of August and October 1966 during a recurrence of the drought periods experienced in the 1930's, then MBSG will have to have energy available to meet a deficiency of about 3,300,000,000 (8,500,000,000-5,200,000,000) kilowatt hours at the 1970 level, increasing during the years to about 5,300,000,000 (8,500,000,000-3,240,000,000) kilowatt hours at the 2020 level.

It would be more prudent to assess this inherent deficiency in firm energy in relation to the MBSG load in 1970 because the MBSG load will grow; interconnection with the Mountain-Midwest Power Pool and Consumers PPD will avoid this inherent deficiency becoming greater with time.



MOUNTAIN-MIDWEST POWER POOL

and

CONSUMERS PUBLIC POWER DISTRICT

Meeting with

TRI-STATE G. & T.
NEBRASKA G. & T.
CENTRAL KANSAS ELECTRIC CO-OP
SUNFLOWER ELECTRIC CO-OP
WHEATLAND ELECTRIC CO-OP

March 2, 1967
Denver, Colorado

MOUNTAIN-MIDWEST POWER POOL
and
CONSUMERS PUBLIC POWER DISTRICT

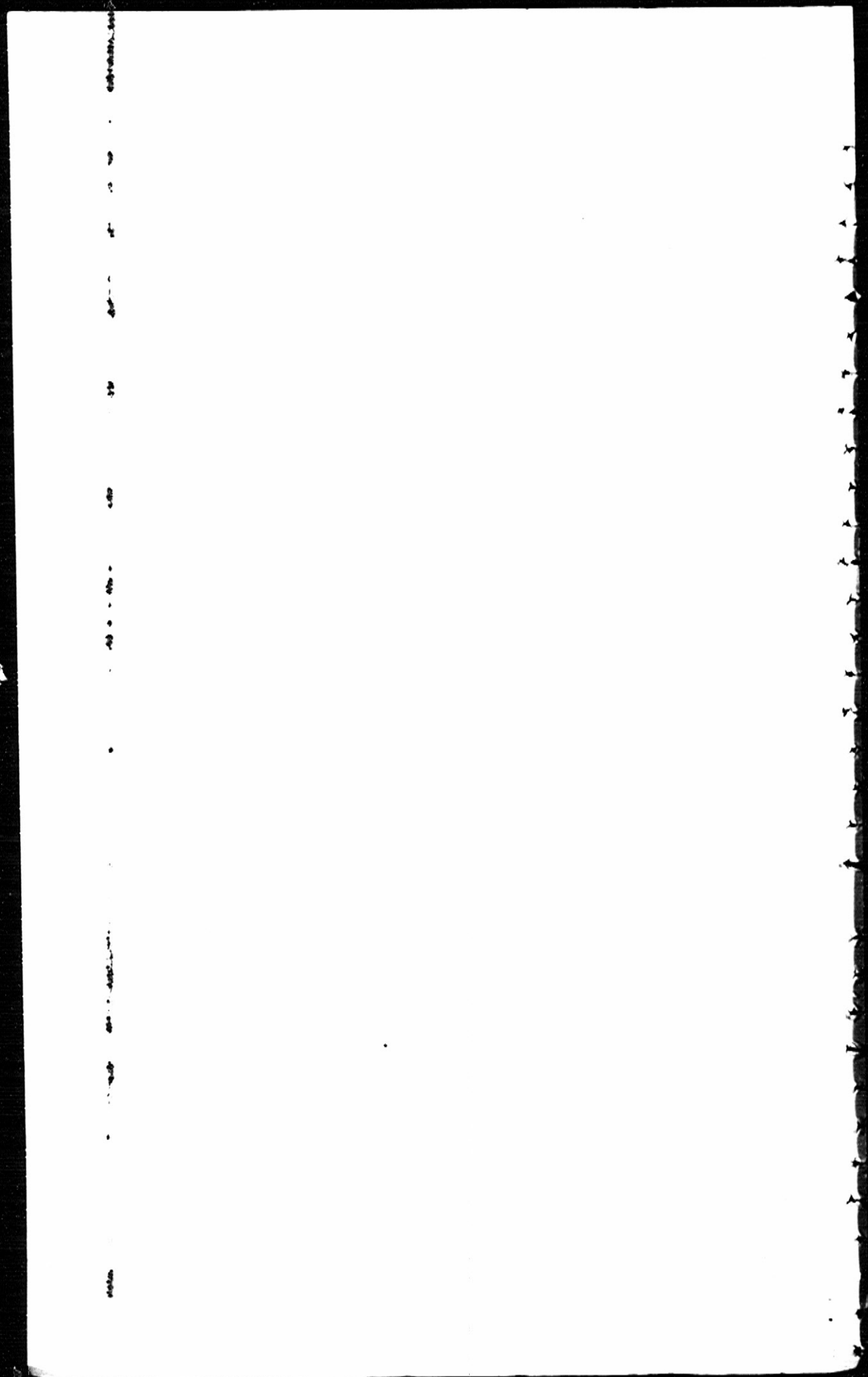
meeting, March 2, 1967

with

TRI-STATE G. & T.
NEBRASKA G. & T.
CENTRAL KANSAS ELECTRIC CO-OP
SUNFLOWER ELECTRIC CO-OP
WHEATLAND ELECTRIC CO-OP

, Denver, Colorado

[4969]



[4970]

BASIS FOR POWER

The two main resources required today for power generation are:-

WATER AND FUEL

Hydroelectric plants do not require fuel, but do require assured supplies of water on a firm basis. This is not a consumptive use of water, because the water can be used for other purposes after it has passed through the power plant.

Steam and nuclear plants require assured and large supplies of cooling water, and this is the reason for locating such plants on the seaboard, large rivers, or lake shores. Where there is no such large body of water, it becomes imperative that adequate supplies are constantly assured for making up that lost (consumed) by evaporation in the cooling towers. As these plants become bigger, more and more water is required; and this water is consumed and cannot be replaced except by fresh supplies.

Gas turbines and gas engines require only small quantities of consumable water in their heat exchangers; thus although this water is consumed, the amount is relatively small.

Fuel is a consumable resource which is not replenished by nature. Fuel requires processing before delivery at the point of use from the source of extraction, and as these sources become exhausted new ones must be found and brought into use.

As consumption of both resources increases, so the more readily available sources become either depleted or exhausted, and the provision of further replacement supplies usually involves greater capital investment, greater distances of delivery and, inevitably, greater cost. This applies as much to water as it does to fuel, and society today requires ever increasing supplies of both.

[4970-4972]

The situation is aggravated frequently because of conflicting demands and competition to secure control over inadequate supplies in regions of shortage.

[4971]

Thus:-

- (a) Conflict exists between the use of water for power generation, municipal and domestic use, industrial use, and irrigation.
- (b) In the case of fossil fuels, the use is wholly consumptive; conflict exists between steam generation and its use for space heating and as a raw material for chemical uses.

It is indeed a unique situation where both water and abundant coal supplies for power generation are adjacent and assured on a firm basis for a long period of time.

The pertinent criteria as they apply to each of these two vital resources are discussed separately.

[4972]

WATER

This mid-continent dry area is subject to the influence of five contiguous river basins:-

Columbia
Missouri
Colorado
Rio Grande
Arkansas

The Columbia, with its very much larger annual runoff has been included because it could assist in meeting some of the power deficiency if the dry years did not coincide with those of the other four river basins.

Separate hydrographs based on three year running averages for the years on record are attached for the Columbia, the Missouri, the Colorado, and the Rio Grande; and a combined one for the same four rivers. These hydrographs have

[4972-4973]

been prepared from the stream flow records of the U. S. Geological Survey and those obtained from the Corps of Engineers in Portland and Omaha.

The hydrograph for the Arkansas is omitted because the continuous records start about 1921 and the really wet period of the other four rivers was prior to 1921.

All four river basins show the same tendency of very much greater discharges up to 1930, when drier years started. The Columbia dry period started about 1923. These indicate that since about 1930 (1923 on the Columbia) the discharges are 20% or more lower than in the period up to 1930. The question thus is:-

Was the period up to 1930 exceptionally wet, and that since 1930 about normal?

Or,

Was the period up to 1930 normal, and that since 1930 abnormally dry?

An answer to this question will show whether one is justified in assessing expectancy of average water supplies from 1900, or whether it would be more prudent to use the lower averages since 1930.

The answer to these two questions affects both surface and subsoil water expectancies.

[4973]

Inadequate supplies of water, especially for consumptive use, have already forced a number of these states to introduce legislation which controls the construction of new wells and the rate of extraction of sub-soil water. One utility, in New Mexico, has acquired 40,000 acres of land for the purpose of providing the plant with adequate supplies of water for make-up purposes. But it will not be allowed to draw any more water or build a new well. Another utility, in Texas, uses the sewage effluent after treatment, and hopes that there will be a sufficient increase in the sewage effluent to provide the cooling water for the next set.

[4973]

To obtain a realistic assessment of the cost of power when looking to the 1970's and beyond, it would be prudent to consider:

Firstly, whether assured supplies on a firm basis can be relied on for the life of the facility, bearing in mind that municipal and domestic demands for consumptive use will increase at even faster rates than that for make-up water.

Secondly, if these supplies can be assured, what will be either the annual cost of purchasing this water or the addition to the capital cost for the provision of this water?

Capital investment in Colorado is running presently at about \$1,000 per acre foot per annum of assured supplies of water; it will be higher in ten years' time. California is building the Feather River aqueduct project to bring water (released from storage in North California) from the Bay area near Sacramento to Southern California at a capital cost of \$1,600 per acre foot.

Currently, the wholesale cost of assured raw water delivered in Colorado is about \$100 per acre foot per annum. The amount of consumable water required for make-up purposes in a steam plant indicates a figure of about 20 acre feet per annum per megawatt. \$1,000 per acre foot of assured annual supplies represents a capital charge of \$20 per kilowatt of capacity. An annual charge of \$100 per acre foot for supplies of water for make-up purposes represents a charge of \$2.00 per kilowatt of demand per annum, or at 50% annual load factor a cost of about 0.45 mill per kilowatt hour. Both charges could be appreciably higher. Incidentally, \$100 per acre foot per annum is equivalent to 31¢ per thousand gallons.

Probably the most important criterion is not whether there is or will be a charge for water, but whether it is realistic to assume that the requisite supplies of water for make-up purposes can be secured at all in the face of diminishing supplies and a receding subsoil water table.

[4974]

The practicality, in years of drought, of one basin being in a position to draw on a neighboring basin's hydro power depends on:-

- (a) Periods of drought NOT being coincidental.
- (b) An adequate transmission link having acceptable stability.

As regards the first point, the combined hydrograph shows that in 68 years there may have been some eight years when the Columbia was above average when the Missouri, Colorado and Rio Grande were below.

The two North-South Direct Current tie lines on the Pacific coast will interconnect Southern California with its high summer peak demand with the Pacific Northwest Power Pool whose peak demands presently occurs in the winter months. The additional summer energy for the south becomes available because Canadian storage on the Columbia will come into use shortly, and will have the effect of increasing the firm load and lengthening the present critical period. There will be little if any surplus energy available to relieve any Midwest shortages, even in a wet year on the Columbia.

As regards the second point, there is no adequate transmission system between Bonneville Power Administration and the Missouri Basin System. The Pacific direct current tie lines become economically feasible because the seasonal transfer from the Columbia Basin amounts to some 750 MW per circuit, and this could be raised to 1,000 MW each.

With this amount of power committed to the two direct current lines and, in addition, that committed to the 500 kV alternating current lines along the coast, it becomes difficult to see where the additional energy can be found in the Pacific Northwest to make a tie line to the Midwest economically feasible.

[4974-4975]

IF WATER SUPPLIES FAIL THE PLANT CANNOT
RUN

THERE IS NO ALTERNATIVE FOR WATER

[4975]

FUEL

Presently, the fuels available are:-

- (a) *Nuclear* - which requires assured supplies of cooling water in quantities at least comparable with a fossil fuel fired steam plant.
- (b) *Fossil Fuels*:
 - (i) Coal - which requires assured supplies of cooling water.
 - (ii) Crude Oil and Residue - which required assured supplies of cooling water.
 - (iii) Refined Oil - oil engines and gas turbines applicable mainly to small plants and peaking plants.
 - (iv) Natural Gas - which requires assured supplies of cooling water if burned for steam generation.

The present pattern of nuclear plants indicates that to be economically competitive the plant should be a large base load installation. That in turn requires large supplies of assured water. In the states of Nebraska and Kansas this means a large river like the Missouri, or a large body of assured water. The smaller nuclear units in the 100-120 MW range require proportionally less water, but it is doubtful whether such small nuclear units would be economically feasible when compared with fossil fuel fired steam plants.

The cost of fossil fuels has been abstracted from:-

- (a) The Federal Power Commission's steam-electric annual production expenses.
- (b) Steam-electric plant factors to 1965, sixteenth edition 1966, issued by the National Coal Association.
- (c) Seventh Survey on Power Costs 1965, data issued by the American Public Power Association.

and is listed in:-

Table 1 - Cost of Fuel in Kansas.

Table 2 - Cost of Fuel in Nebraska.

These two tables indicate that the cost in cents of the three main classes of fuel per million BUT's as burned is:-

[4976]

	<i>Nebraska</i>	<i>Kansas</i>
Coal	29.5 - 33.3	24.3 - 28.0 (east)
Oil (furnace)	37.1 - 57.6	*22.7 - 63.0
Oil (furnace 1960 min.)		18.35 -
Oil (diesel)	48.0 - 76.8	60.0 - 77.9
Gas	23.3 - 30.0	20.2 - 35.6
Gas (1960 min.)	-	18.17 -

The cost of coal primarily reflects the cost of hauling from the mine to the plant, and at least 50% of the above cost represents this freight.

The oil prices are rising continuously as is evidenced by the Kansas costs. The minimum given (*) applies to Murray Gill plant, the other crude oil costs are all in the 30.0 cents per million BTU's range or higher. The higher costs are for distillate as burned in gas turbines and diesel engines.

The gas prices are rising and the minimum price will soon reach 30¢ per million BTU's. With the Federal Power Commission having stated that it is not in the best national interest to use natural gas for steam raising, it is doubtful if many new low price contracts can be negotiated for natural gas for the life of the facility. Table 3 gives some gas turbine fuel cost particulars and heat rates.

There are a number of co-ops in Kansas which are favourably placed and have natural gas supply contracts in the range of 10¢ a million BTU's. It is doubtful whether this can be repeated. That being the case, such utilities could well find themselves in the enviable position of selling such gas at say 30¢ a million BTU's and thus reduce the purchase price of their bulk power.

[4976-4977]

In making projections into the future, the 1970's and even the 1980's, it appears that it would be prudent to assume that the cost per million BTU's as burned would be:-

	<i>Nebraska</i>	<i>Kansas</i>
Coal	30.0 - 35.0	30.0 - 35.0
Oil (furnace)	35.0 - 45.0	35.0 - 45.0
Oil (diesel)	60.0 - 100.0	60.0 - 100.0
Gas	30.0 - 40.0	30.0 - 40.0

On this basis of projected future fuel costs, the fuel component of the cost of production (as defined by the FPC in their publications) of one net kilowatt hour can be expected to be:-

[4977]

Fuel	1) Assumed BTU's per net kw-hr.	Cost of fuel, mills per kw-hr.	
		<i>Nebraska</i>	<i>Kansas</i>
Coal	9,000	2.7 - 3.2	2.7 - 3.2
Oil (furnace)	9,000	3.1 - 4.1	3.1 - 4.1
Oil (diesel gas turbine)	11,000	6.6 - 11.0	6.6 - 11.0
Gas (turbines or boilers)	10,000	2) 3.0 - 4.0	2) 3.0 - 4.0

- Notes: 1) The mean present figures in the FPC publication and American Public Power Association have been reduced to reflect the future gains in performance.
- 2) It has not been possible to find fuel costs as low as these in presently published performance data for gas turbines.

To these fuel costs per kilowatt hour it is necessary to add production expenses to cover supervision, maintenance, operating personnel, consumable stores and an allowance probably of at least half a mill per kilowatt hour if water is purchased annually, or \$2.00 per kilowatt of demand per annum, before fixed charges are taken into account.

[4977-4978]

If supplies of make-up water on a firm and assured basis have to be provided by capital expenditure, then it would be prudent to allow \$20 per kilowatt of demand.

[4978]

*PROPOSAL OF THE MOUNTAIN-MIDWEST
POWER POOL*

AND

CONSUMERS PUBLIC POWER DISTRICT

To the membership of the Mountain-Midwest Power Pool as described in 1965 should be added the Yampa-Green Corporation. This corporation will store water in the Black-tail Reservoir in the Yampa River Valley and sell water for make-up purposes to Oak Creek Power Co. for the thermal plant. Thus water for make-up purposes will be assured, even in a period of historically the worst sequence of dry years. Later, as further reservoirs are built in the higher elevations of the Rocky Mountains, pumped-storage plants will be added. Appendix I gives the present constitution of the Pool and a summary of the different facilities.

Since the publication of the brochure, Consumers Public Power District has initiated the construction of a large nuclear plant on the banks of the Missouri River. This will consist ultimately of three units, each of about 800MW, and the first is planned to come into service in mid-1972.

The Colorado coal fired steam plant with the adjoining pumped-storage facilities will be connected with the Consumers nuclear plant by a 500 kV (ultimately) transmission system. This is shown on the attached system diagram.

By this interconnection, the benefits of the pumped-storage facilities of the Pool will be available for both the Consumers PPD nuclear plant on the Missouri and the Oak Creek Power Co.'s coal fired steam plant, and generating units at both will be able to operate continuously at or near name-plate rating. In effect, during the day peak, Oak Creek with the pumped-storage hydro peaking capacity will take over

[4978-4979]

the system load probably as far as Grand Island. At night the nuclear plant will supply the energy probably as far as Archer (Cheyenne). This means that, except for emergencies, the whole output of the base load plants including hydro peaking capacity will never be transmitted the whole distance, and a more economical system results both as regards capital utilization and losses. The surplus kilowatt-hours generated on the Missouri at night will not be transmitted the full distance for storage, but storage will take place nevertheless by displacement. This is illustrated in the attached load flow diagrams for 1975 and 1980 respectively.

The supply to the Nebraska G. & T. CoOps will be through the existing systems, expanded as may be necessary, receiving the energy from the integrated Consumers-Mountain Midwest system at North Platte, Grand Island, Sheldon and such other stations as the evolving pattern of the load will demand.

[4979]

The supply to Tri-State presents no problems, because there already exists a 230 kV line from Stegal to Archer, another from Stegal to Sidney and on to North Platte. A 230 kV connection to the Pool's busbars at Archer and at North Platte will not only supply power to Tri-State but very materially increase the capability and the stability limits of the 230 kV system in the Nebraska Panhandle.

The supply to the CoOps in Western Kansas will be by a 230 kV line from North Platte, which could be extended to Cimarron River plant of the Western Light and Telephone Co. One or more substations will be provided for delivery of power and energy to the systems of the four Kansas REA's, namely:-

Central Kansas, Pioneer, Sunflower and Wheatland.

This transmission system from North Platte will be constructed by Consumers PPD alone, or in association with Mountain-Midwest. Initially, the line will consist of one cir-

cuit, and when the load exceeds about 150 MW a second circuit will be installed. Payment for the use of these transmission facilities could be in the form of:-

- (a) A mill rate per kilowatt hour, or
- (b) An annual charge per kilowatt of demand, or
- (c) A proportionate annual rental charge.

The lowest cost will be obtained with alternative (c), especially as the demand of each CoOp grows. The cost of transmission from North Platte will depend largely on the rate of interest. It is hoped that REA funds can be made available for this, because the total capital cost for this transmission system will be at least one eighth of the corresponding cost of a new thermal plant.

COST OF POWER

It is considered possible to form a non-profit corporation for the construction of these generation and transmission facilities, and that such a corporation will have the benefit of tax exemption. On this basis, the bankers advise a rate of interest of between 4.5% and 5% would be applicable.

The price for the power and energy quoted in the Memorandum of Intentions between Mountain-Midwest Power Pool and Consumers Public Power District at the Oak Creek thermal plant switchyard at 230,000 volts is at the following rates:-

- (a) \$12.50 per kilowatt per annum for contracted power demand. The foregoing demand charge is based on the ability of the POOL to obtain construction funds for generation at an interest rate of 5.5%. In the event the interest rate is decreased or increased, the foregoing rates will be adjusted accordingly.
- (b) 2.1 mills per kilowatt hour for energy. This energy rate is based on a

delivered cost of fuel for the thermal plant of \$0.145 per million BTU. In the event the cost of fuel is decreased

[4980]

or increased, the foregoing rates will be adjusted accordingly.

The various contractors have revalidated the prices in their contracts with Rocky Mountain Power Co. and Oak Creek Power Co. up to April 1, 1967, so the above prices apply.

To cover the cost of transmission the POOL agrees to deliver electric power and energy to CONSUMERS at points other than the Oak Creek thermal plant switchyard at the following rates which shall be added to the base energy charge in paragraph (b) above. Delivery of power and energy to CONSUMERS shall be at the POOL's 230,000 volt facilities at the respective delivery points. The additional transmission charges are based on procuring the construction funds for transmission and substations at an interest rate of 4%. In the event the interest rate is decreased or increased, the following charges will be adjusted accordingly:

- (a) For delivery at Hayden, Colorado; add 0.3 mill per kilowatt hour.
- (b) For delivery at Archer, Wyoming; add 1.1 mill per kilowatt hour.
- (c) For delivery at North Platte, Neb; add 1.5 mill per kilowatt hour.
- (d) For delivery at Columbus, Nebraska; add 1.5 mill per kilowatt hour.

With the construction of Consumers nuclear plant on the Missouri, the transmission system will require re-evaluation and the charges for transmission will not be higher than those quoted above. It is probable that it would be to the advantage of all concerned if the rate was based on a charge per kilowatt of maximum demand per annum - or an agreed rental charge. Based on an annual load factor of 60% the above charges expressed as a charge per kilowatt of maximum demand per annum will amount to:-

[4980-4981]

(a) At Hayden	\$1.57
(b) At Archer	\$5.80
(c) At North Platte, Grand Island, and East	\$7.90

FIRM POWER AND ENERGY AND CRITICAL PERIOD

Water, with an assurance of adequate supplies even under the most adverse conditions, is probably the main factor which defines firm power and energy. This is applicable with equal forces to hydroelectric sources as to nuclear or steam plants which are fossil fuel fired. With hydro this is obvious, with nuclear or steam plants shortage of either cooling water or make-up water for that lost through evaporation will restrict output and may force the plant to be shut down.

[4981]

It is possible to have different definitions for "Firm Power and Energy", each quite correct for the particular case, but such a definition could be totally unacceptable to a consumer of electricity. Two examples are given:-

- (a) One, where the definition must acknowledge the competitive demands of the other direct and indirect uses of water, such as that which is inherent in a multipurpose project.
- (b) The other, where the definition is related solely to the consumer of electricity.

The first example is best illustrated by the very proper and logical definition adopted for the Missouri River Basin System. "Definition of Power Terms" is reproduced from the Supplemental Report on Adequacy of Flows in the Missouri River, dated April 1959, page 40:-

In order to clarify the power terms used in this report, the following definitions are presented. These definitions refer to power available at the power plants before any adjustments for transmission system losses or diversity.

[4981-4982]

(a) *Dependable Capacity* is the estimated system generator capability which would be available in December following four years of adverse water supply conditions similar to the 1930-1933 period of record, after deducting station or plant use.

(b) *Firm Power* is that power intended to have assured availability to provide for the customers' load requirements, under specified conditions, as limited by (a) the Dependable Capacity after reduction for reserves, and (b) the long range average annual and seasonal energy production.

(c) *Firm Peaking Power* is the Dependable Capacity remaining, after reduction for reserves, and after deducting the capacity associated with Firm Power. Sales of Firm Peaking Power is predicated on the return of associated energy during periods when it can be effectively utilized by the Federal power system.

The second example is a reproduction of the definition of appropriate terms from the Power Pool Agreement recently adopted for the Pacific Northwest:-

(a) *Critical Peaking Period* shall mean the Period or Periods (not necessarily consecutive) during a Contract Year in which the relationship of the computed Peaking Capability of the Coordinated System to the Estimated Adjusted Peak Load of the Coordinated System limits the Firm Peak Load Carrying Capability of the Coordinated System.

[4982]

(b) *Critical Period* shall mean that multi-month period, determined for the Coordinated System under adverse stream flows of historical record adjusted for changes in consumptive uses, during which the least amount of Estimated Firm Energy Load can be served from the Firm Resources of the parties hereto.

(c) *Critical Period Energy Capability* of the Coordinated System or of a system shall mean the average energy which can be produced under the coordinated operation during the Critical Period by Firm Resources, excluding energy reserve pursuant and also excluding those Firm Resources scheduled for Maintenance Outage, based on full use of stored water available under the coordinated operation and which can be shaped to the Estimated Adjusted Energy Load of the Coordinated System during the Critical Period by the machine capacity, pondage, reservoir-transmission and associated facilities of the Coordinated System.

Mountain-Midwest Power Pool with Consumers Public Power District consider the second definition more acceptable to electricity consumers. If this second definition is applied to a critical period of the historical stream flows of the Missouri, the firm power and energy will be appreciably lower than under the first definition.

THE NATURE OF THE LOAD AND ITS SHAPE

A utility has to install and have available the plant and transmission facilities to meet the demand throughout each hour of the 8760 hours in the year. Every utility man is fully aware of this.

In an integrated and coordinated system the hourly pattern of the load requires further analysis and examination if optimum economies are to be secured in the overall capital investment.

Omaha Public Power District's system is considered representative of the load in eastern Nebraska, and probably is very close to that in the Midwest generally. This load has been analyzed and the attached charts show the major variations during the year.

- (1) Per unit hourly load shape, first full week in April.
- (2) Per unit hourly load shape, first full week in August.
- (3) Per unit hourly load shape, first full week in December.

[4892-4983]

Nebraska Public Power System and Consumers Public Power District eastern system monthly - as compared with hourly - pattern of variations in energy, demand and load factor have been analyzed and a chart shows the monthly variations.

[4983]

The charts show that the annual maximum peak demand as regards capability occurs in July and August, and those are also the months when the monthly load factor is the lowest of the year. On the other hand, the lowest maximum demand of the year occurs during the month of highest load factor. It is in such circumstance that the combination of base load nuclear and coal fired steam plants secures the maximum benefits from integrated coordination with pumped storage peaking plants.

As the magnitude of the combined load grows, so will the economic benefits become more and more pronounced from:

- (a) The operation of the large steam and nuclear plants at high capacity factors near nameplate rating, made possible
- (b) By the ability of the pumped-storage plants to absorb weekends and nightly large blocks of energy for storage kilowatt hours.
- (c) And the release of the stored energy to meet the daily peak.

These economic benefits will be increased still further as larger and still larger hydro and base load steam units are brought into use, and as greater use is made of the capital investment in the permanent structures and the transmission system.

ADVANTAGES AND BENEFITS TO REA'S AND OTHER PURCHASERS

Overall and in detail it is difficult to visualise a cheaper and more reliable source of electrical energy than one which is based on:-

In the West. Prime Source of Power.

- (1) A minemouth coal fired base load steam station with assured make-up water supplies, integrated with
- (2) The Rocky Mountain Power Co's pumped-storage plant with assured water supplies at all times through more than adequate storage to carry through the most critically dry period on record, and later integrated in addition with
- (3) The Yampa-Green Corporation's water supply and pumped-storage facilities also based on assured water supplies at all times through more than adequate storage to carry through the most critically dry period on record.

Above will use the drainage of the Colorado River Basin which is west of the Continental Divide.

In the East, a Prime Source of Power.

- (4) A nuclear plant on the banks of the Missouri River, whose flow is regulated presently by 78,000,000 acre feet of storage to give an assured supply of make-up and cooling water at all times, probably even through a period equal to the most critically dry period on record; about 100 months.

This plant will use the drainage of the Missouri River Basin which is east of the Continental Divide.

The Two Sources of Power and Energy Connected.

- (5) By a transmission system designed to give stability and continuity of supply under all conditions except Acts of God, and sabotage. Stability and continuity of supply to avoid local and regional blackouts will be achieved using practices, devices and operating techniques proven in service on other systems.

The benefits accruing to the REA's will be many, such as:-

[4984]

- (6) Increased capability of the existing 230 kV and 115 kV transmission systems - through multiple power injection.
- (7) Independent of assistance from neighboring river basins.
- (8) Assured continuity of electricity supply, because the two sources of prime power will be more than 500 miles apart.
- (9) Blackouts will be avoided because the main tie line voltage will be determined to provide maximum practical stability, using criteria and techniques proven in service.
- (10) Purchasers of power will be acquiring ownership of the power facilities in proportion to their power purchases.

But,

the greatest benefits inherent in a supply from Consumers Public Power District and Mountain-Midwest Power Pool facilities will be that POWER AND ENERGY

- (11) *SUPPLIES WILL BE ASSURED*, unaffected by diminishing surface water supplies and receding sub-soil water levels.
- (12) *COST WILL BE STABILIZED*, independent of rising gas prices and exhaustible reserves with every possibility of a progressive reduction in the basic cost of power as the demand increases.

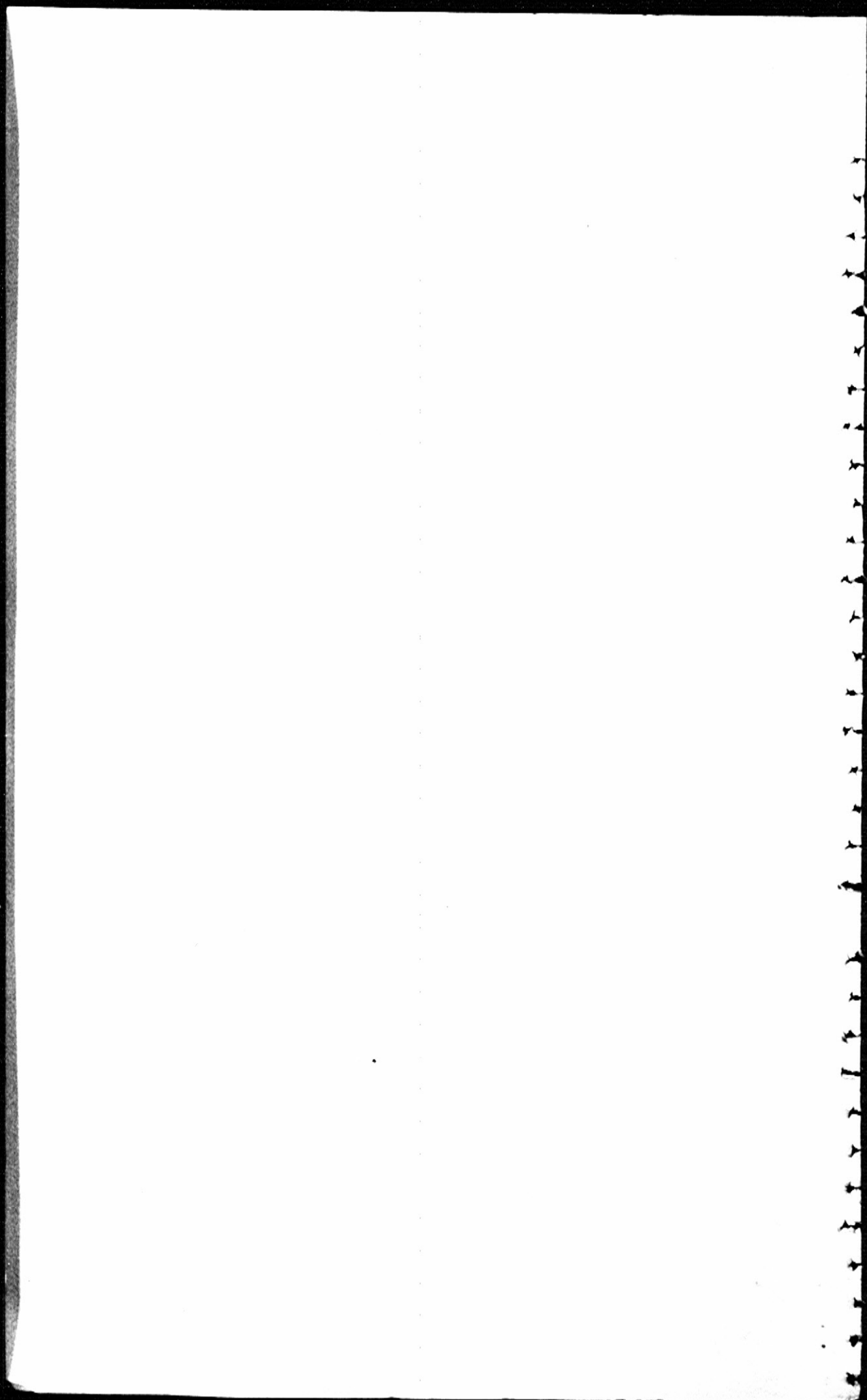


TABLE 1 - COST OF FUEL IN KANSAS

Utility	Plant	Installed Megawatts	Cost in Cents Per Million BTU as Burned		
			Coal	Oil	Gas
1. Central Kansas Po. Co.	Colby	12.0	-	63.4	21.8
2. "	Hays	19.0	-	66.8	22.0
3. "	Ross Reach (2)	34.7	-	66.0	21.8
4. Empire District El.	Riverton	155.0	24.3	29.0	22.2
5. Kansas Gas & El.	Gordon Evans	149.6	-	32.3	20.9
6. "	Murray Gill	348.3	-	22.7	20.9
7. "	Neosho	113.5	27.7	31.5	23.4
8. "	Ripley	87.3	-	36.3	20.5
9. "	Wichita	26.0	-	-	25.1
10. Kansas Power & Light	Abilene	33.8	-	38.4	22.9
11. "	Hutchinson #1	12.5	-	-	22.9
12. "	Hutchinson #2	252.2	-	34.7	23.0
13. "	Lawrence	210.2	27.4	38.1	22.7
14. "	Tecumseh	346.1	28.0	42.7	21.8
15. Western Power & Gas	Cimarron R.	58.8	-	-	35.6
16. "	Concordia	8.0	-	-	26.1
17. "	Fort Dodge	30.8	-	62.1	20.2
18. "	A. Mullergren	133.5	-	-	23.6
19. City of Ashland	Ashland	3.5	-	-	25.0
20. City of Belleville	Belleville	4.25	-	77.9	35.1
21. City of Chanute	Chanute	19.0	-	41.3	24.2
22. Coffeyville	Coffeyville	40.3	-	44.0	24.3
23. Iola	Iola	9.5	-	-	35.6
24. Kansas City	Kaw	144.0	27.1	-	24.3
25. "	Quindaro	100.0	26.7	-	24.3
26. Hoisington	Hoisington	5.3	-	-	25.0
27. Horton	Horton	3.75	-	-	30.3
28. Kingman	Kingman	5.5	-	-	24.2
29. Pratt	Pratt	23.8	-	-	?
30. Stockton	Stockton	3.7	-	75.7	27.0
31. Wellington	Wellington	14.5	-	-	?
32. Winfield	Winfield	20.0	-	-	?
33. Wheatland El.	Garden City	27.5	-	-	?

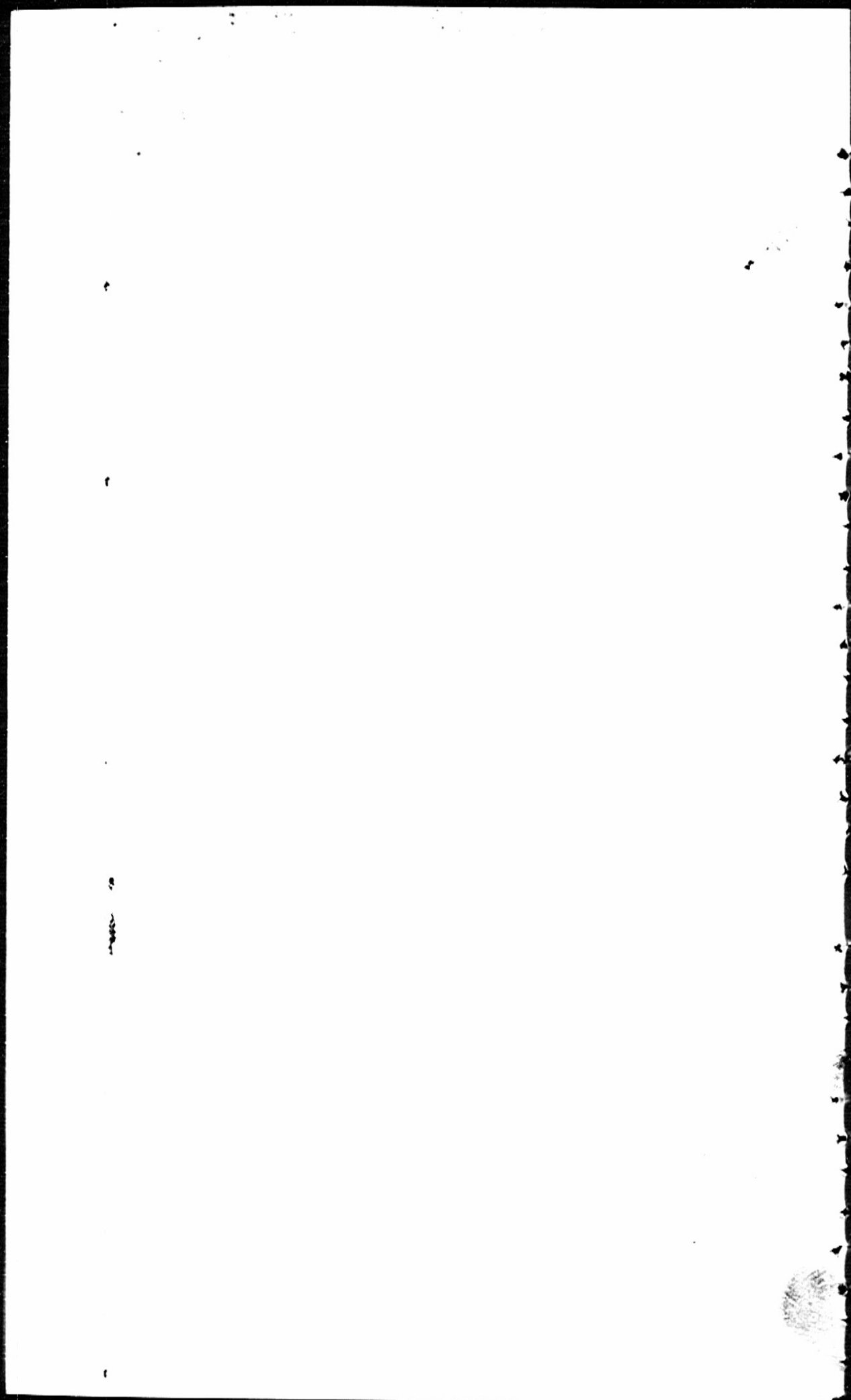
TABLE 2 - COST OF FUEL IN NEBRASKA

Utility	Plant	Installed Megawatts	Cost in Cents Per Million BTU as Burned		
			Coal	Oil	Gas
1. City of Alliance	Alliance	16.5	-	-	29.7
2. City of Divid	Divid	5.75	-	-	30.0
3. City of Fairburg	Fairburg	21.0	-	48.5	27.0
4. City of Fremont	Fremont (2)	62.2	33.3	-	27.7
5. City of Grand Island	Grand Island (2)	45.0	-	48.9	28.3
6. City of Hastings	Hastings	32.0	-	-	28.7
7. City of Schuyler	Schuyler	9.0	-	58.3	29.0
8. C. Neb. P. P. & I. D.	Canaday	108.8	-	47.3	28.5
9. Consumers P. P. D.	Sheldon	86.0	29.9	-	27.0
10. "	Scotts Bluff	42.2	-	37.1	23.3
11. "	Ogallala	7.5	-	76.8	28.7
12. "	Lincoln	29.3	29.5	50.5	28.0
13. N. P. P. S.	Kramer	103.5	29.5	-	26.4
14. O. P. P. D.	Jones Street	160.0	32.4	-	26.0
15. "	N. Omaha	400.0	29.6	-	25.7
16. "	S. Omaha	20.0	-	57.6	26.5

[4986]

TABLE 3 - GAS TURBINES

	Capacity Megawatts	nett heat rate mills per kw-hr.	fuel cost mills per kw-hr.	Type fuel
<u>NEBRASKA:</u>				
Divid City	5.75	-	6.586	Oil & Gas
Holdredge	2.4	10.350 (?)	7.620	Oil & Gas
<u>KANSAS:</u>				
Ashland	3.5	-	5.438	Oil & Gas
Belleville	4.25	9.701	3.08	Oil & Gas
Chanute #1	1.7	11.251	7.311	Oil
Chanute #2	4.0	21.812	8.601	Oil & Gas
Hoisington	5.3	-	3.822	Oil & Gas
Horton	3.75	-	8.016	Oil & Gas
Kingman	5.57	-	3.532	Oil & Gas
Stockton	3.72	-	3.827	Oil & Gas
Wamego	3.73	-	4.328	?
<u>Some Larger Gas Turbines:</u>				
Homestead - Fla.	18.495	11.968	6.5	Oil & Gas
Algona - Iowa	9.4	-	5.38	Oil & Gas
Paris - Kentucky	5.567	11.634	6.63	Oil & Gas
Easton - Maryland	12.87	11.305	7.198	Oil
Ipswich - Mass.	9.195	11.800	6.969	Oil & Gas
Hudson - Mass.	15.895	10.855	6.1	Oil & Gas
Carthage - Mo.	23.8	-	3.048	Oil & Gas
Columbia - Mo.	12.5	24.288	20.72	Oil
Freeport - N.Y.	13.1	10.601	4.6	Oil
Greenville - Texas	15.0	10.265	2.977	Oil & Gas



APPENDIX I

*Colorado Society of Engineers
Fifty-first Convention and Exhibition
February 24 - 25, 1967*

MOUNTAIN-MIDWEST POWER POOL

The Mountain-Midwest Power Pool will consist of pumped-storage hydroelectric and steam generating plants situated in western Colorado, together with a transmission system to convey the power to users in the State of Nebraska, parts of Kansas and other neighboring states. The several generating installations hereinafter described, are contractually integrated and will operate on a totally coordinated basis to make maximum economic use of western Colorado hydro and coal resources for the generation of power to be provided to users at reasonable and attractive rates.

The Mountain-Midwest Power Pool comprises the following entities:

Rocky Mountain Power Co.
Oak Creek Power Company
East-West Intertie, Inc.
Yampa-Green Corporation

Rocky Mountain Power Co. and Yampa-Green Corporation together will provide long-term water storage for conservation of runoff amounting to over 500,000 acre-feet of usable storage. This will assure water supplies on a firm basis even during any historically known sequence of dry years; and, with the main storage reservoir water levels being at altitudes of 7,200 to 9,200 feet, freezing and icing will present no problems.

The pumped-storage ultimate capability as represented by the Rocky Mountain Power and Yampa-Green reservoir capacities will amount to over 500,000,000 kilowatt-hours,

[4988-4989]

more than adequate capability to provide for daily peaking and the spinning and emergency reserves to meet the requirements of any baseload nuclear and steam plants of all the adjoining states, the consumers of which will be assured then of ample supplies of cheap power and elimination of blackouts.

Associated with these pumped-storage plants is the Oak Creek baseload thermal powerplant, situated on the coal fields north of Oak Creek in Routt County, and the transmission system of East-West Intertie, Inc.

[4989]

ROCKY MOUNTAIN POWER CO.

The Sweetwater Project provides the main storage reservoir in the Meadows of the South Fork of White River, and another lower reservoir downstream near the confluence with Lost Solar Creek, to give a total of about 250,000 acre-feet of long-term storage and conservation of runoff, including some portion from Sweetwater drainage. This storage produces, after releases for fish and game and stream cleansing, 150,000 acre-feet of water per annum on a firm basis, even in any sequence of dry years on record.

The main Meadows Reservoir is connected by two tunnels, one east and the other west, to the forebays of the Sweetwater and Lost Solar peaking pumped-storage plants. The capacities of the main storage reservoirs are such that the two plants together represent a maximum potential peaking capability in any one cycle of 150,000,000 kilowatt-hours, and Sweetwater alone of 18,000,000 kilowatt-hours. The main features of the reservoirs are:

Meadows Reservoir

Maximum water-surface elevation	9,280 feet
Usable storage (capable of increase)	133,000 acre-feet

Sweetwater Forebay

Maximum water-surface elevation	9,147 feet
Usable storage	2,900 acre-feet

[4989-4990]

Sweetwater Lake (Sweetwater Afterbay)

Maximum water-surface elevation	7,772.5 feet
Usable storage	7,655 acre-feet

Lost Solar Forebay

Maximum water-surface elevation	9,290 feet
Usable storage	3,380 acre-feet

Lost Solar Reservoir (also Lost Solar Afterbay)

Maximum water-surface elevation	7,940 feet
Usable storage	100,000 acre-feet

The design of the hydraulic system ensures that the water level of Meadows Reservoir remains substantially constant through the summer months.

[4990]

OAK CREEK POWER COMPANY

The Oak Creek powerplant will use coal from the Edna Mine of the Pittsburgh and Midway Coal Company. Initial installation comprises two 300,000-kilowatt steam turbine generators. Makeup water for all purposes will be drawn from the service reservoir of about 5,000 acre-feet upstream on Trout Creek and from the Blacktail Reservoir in the Yampa Valley. With coal and water assured, the site is capable of sustaining an ultimate baseload capacity of at least 3,000,000 kilowatts.

EAST-WEST INTERTIE, INC.

East-West Intertie will construct the transmission lines and facilities linking the pumped-storage plants and Oak Creek powerplant and transmitting the power to major users in Nebraska and other neighboring states.

The transmission system has been designed for 500 kilovolts and will be coordinated with the generating plants at Sweetwater and Oak Creek and the nuclear plant on the Missouri River to ensure the maximum possible stability to

[4990-4991]

avoid blackouts. Temporary operation at lower voltages of 230 kilovolts and 345 kilovolts is envisaged while the load is growing.

YAMPA-GREEN CORPORATION

The Yampa-Green project comprises:

The Blacktail Reservoir

on the Yampa River will provide long-term storage capacity for the waters draining from the Yampa River and the tributaries upstream, mainly Service Creek, Morrison Creek and Little Morrison Creek. The main features are:

Maximum water-surface elevation	7,260 feet
Usable storage capacity	220,000 acre-feet

Initially, supplies of water will be drawn from this reservoir and pumped to the baseload thermal plant of Oak Creek Power Company to provide assured supplies of makeup water for all purposes. Later, this reservoir will form the afterbay for pumped-storage hydro-electric plants.

[4991]

A series of upper reservoirs will be constructed, by stages, as forebays for the pumped-storage plants on Blacktail Reservoir and to provide storage capacity for spinning and emergency reserve as may be required by the Power Pool. These reservoirs are:

Lower Green Creek Reservoir

will provide the forebay of the first peaking pumped-storage plant. Its main features are:

Maximum water-surface elevation	9,210 feet
Ultimate usable storage capacity	43,000 acre-feet
Maximum gross head	2,150 feet
Ultimate usable storage	
represents	80,000,000 kw.-hrs. generation

Main Green Creek Reservoir

is the forebay of the second peaking pumped-storage plant, with main features:

Maximum water-surface elevation	9,480 feet
Ultimate usable storage capacity	100,000 acre-feet
Maximum gross head	2,420 feet
Ultimate usable storage represents	200,000,000 kw.-hrs. generation

Service Creek Reservoir

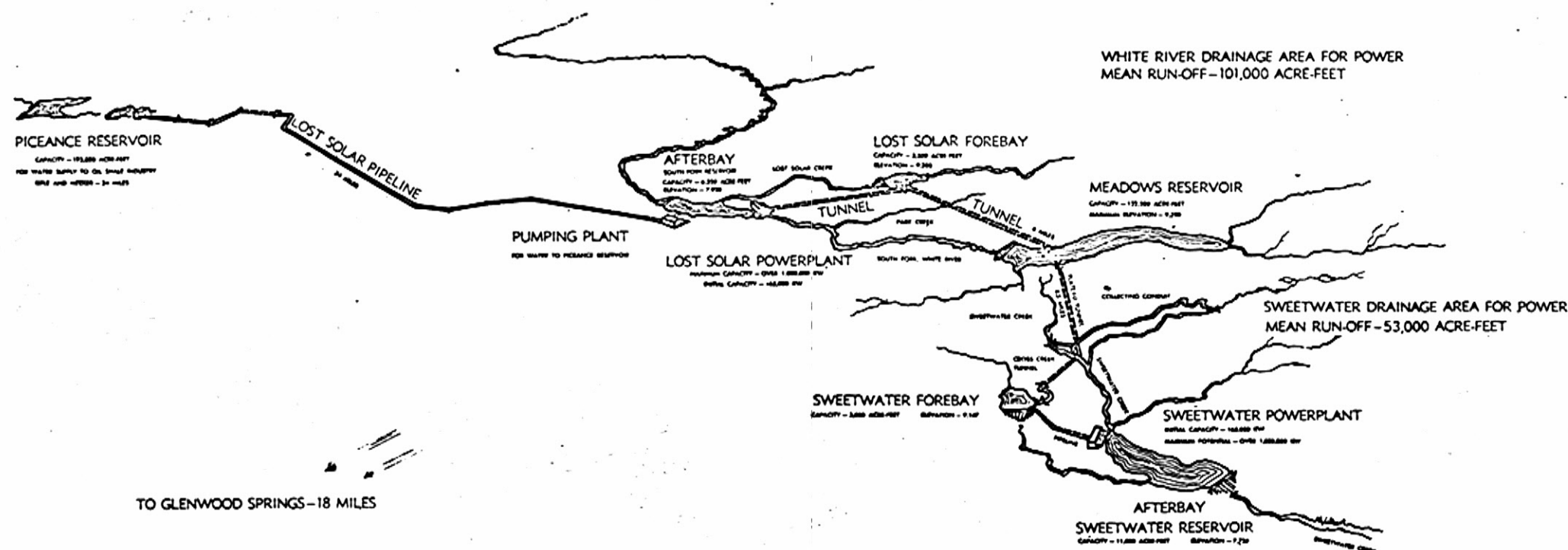
will supplement the capacity of the main Green Creek Reservoir, and its main features are:

Maximum water-surface elevation	9,920 feet
Usable storage capacity	20,000 acre-feet
Maximum gross head to main Green Creek Reservoir	660 feet
Usable storage in relation to Blacktail Reservoir represents	48,000,000 kw.-hrs. generation

The project is designed to allow construction in stages, each economically feasible; and when all reservoirs have been completed their combined capacities represent 328,000,000 kilowatt-hours of peaking capability and spinning and emergency reserve. The total usable capacity for the operation of the Blacktail pumped-storage plants and long-term water conservation and storage in all reservoirs amounts to 383,000 acre-feet.

February 22, 1967

Rocky Mountain Power Co.
275 University Boulevard
Denver, Colorado



ROCKY MOUNTAIN POWER CO.

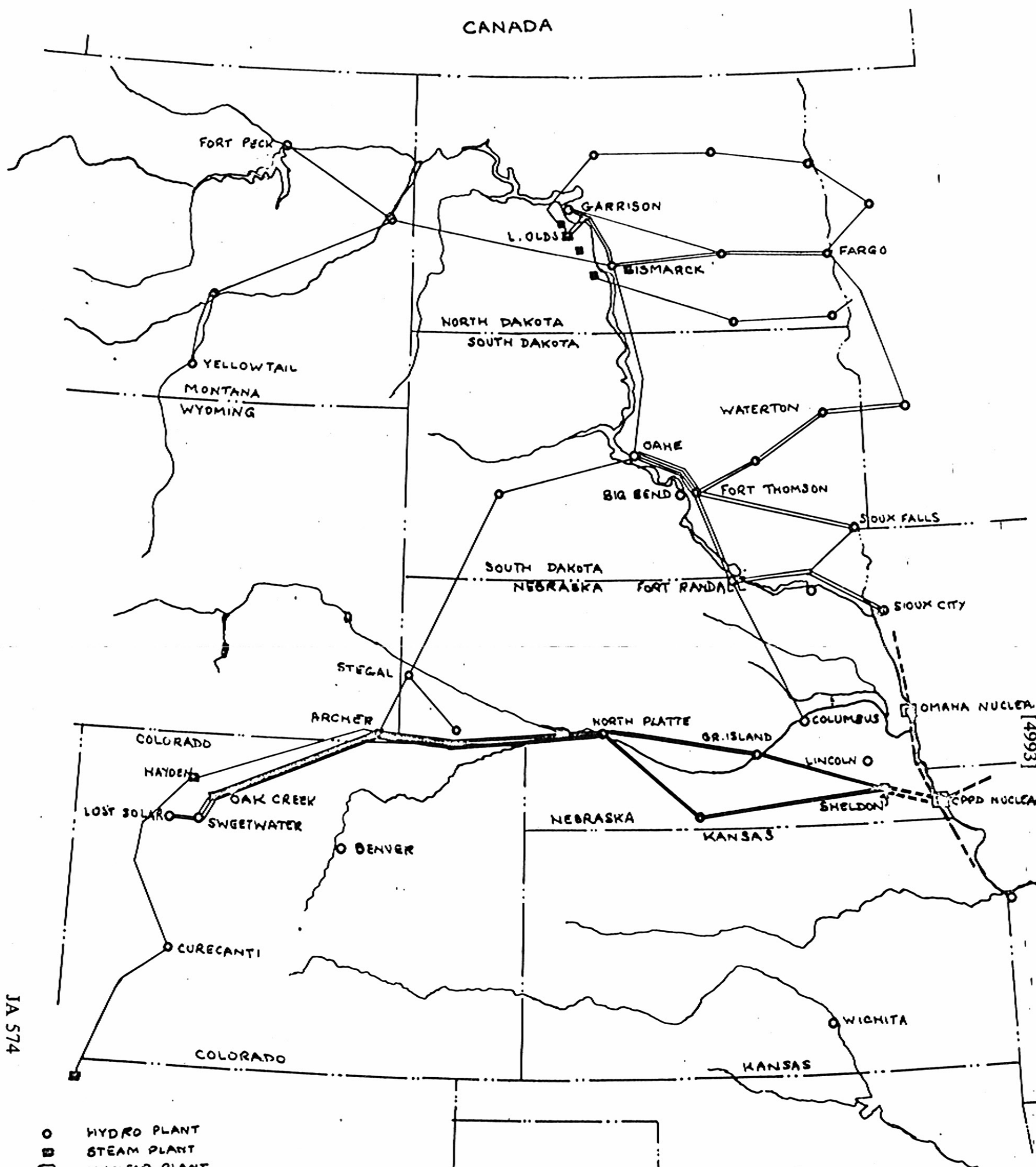
SWEETWATER HYDROELECTRIC PROJECT

A DEVELOPMENT FOR PEAKING CAPACITY

BASED ON

PUMPED-STORAGE GENERATION - SUPPLEMENTED BY STORED RUNOFF

CANADA



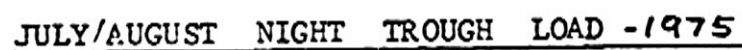
- HYDRO PLANT
- STEAM PLANT
- NUCLEAR PLANT
- 500/345KV TRANSMISSION CIRCUIT
- - - 345KV TRANSMISSION CIRCUIT
- 230 KV TRANSMISSION CIRCUIT

— MISSOURI BASIN SYSTEMS GROUP —
 &
 — MOUNTAIN MIDWEST POWER POOL —

0 100 200 300 400 500 600
 STATUTE MILES

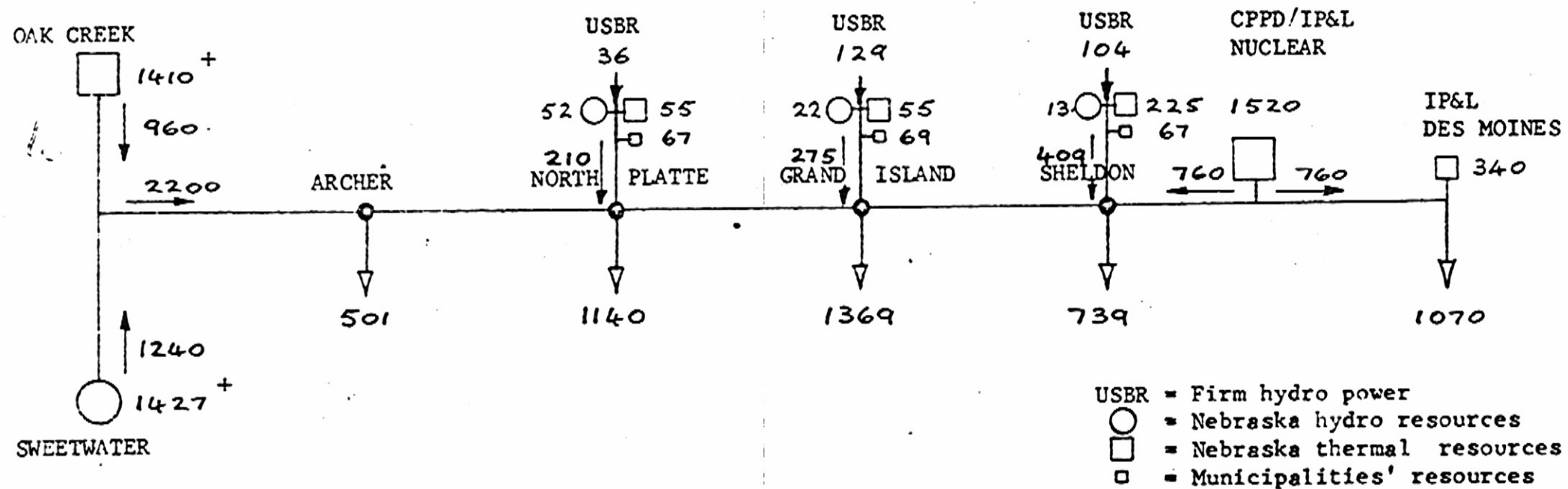
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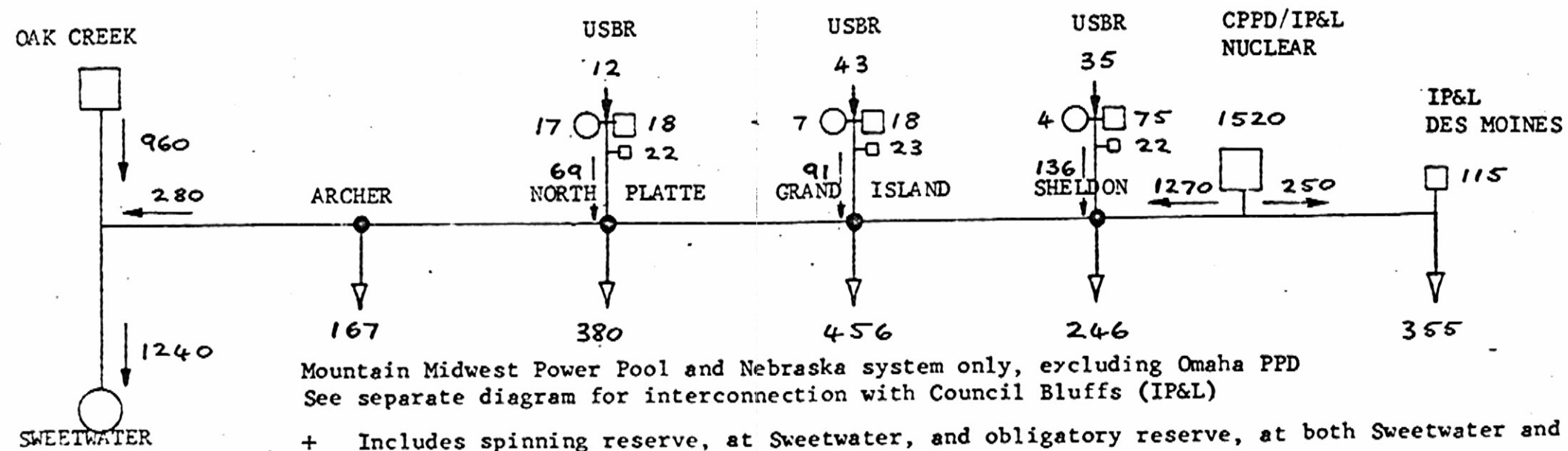


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JULY/AUGUST DAY PEAK LOAD - 1980



JULY/AUGUST NIGHT TROUGH LOAD - 1980

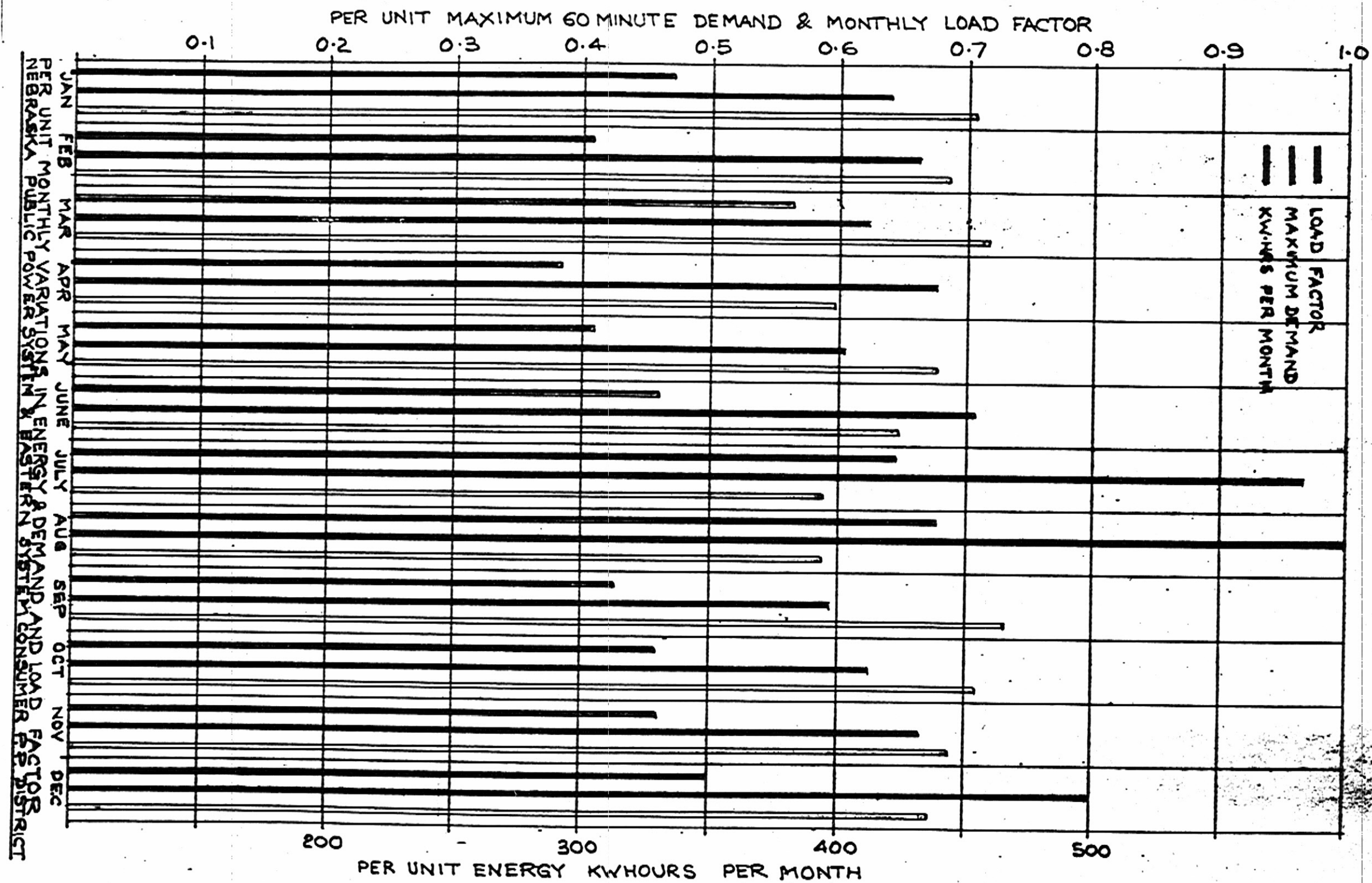


Mountain Midwest Power Pool and Nebraska system only, excluding Omaha PPD
See separate diagram for interconnection with Council Bluffs (IP&L)

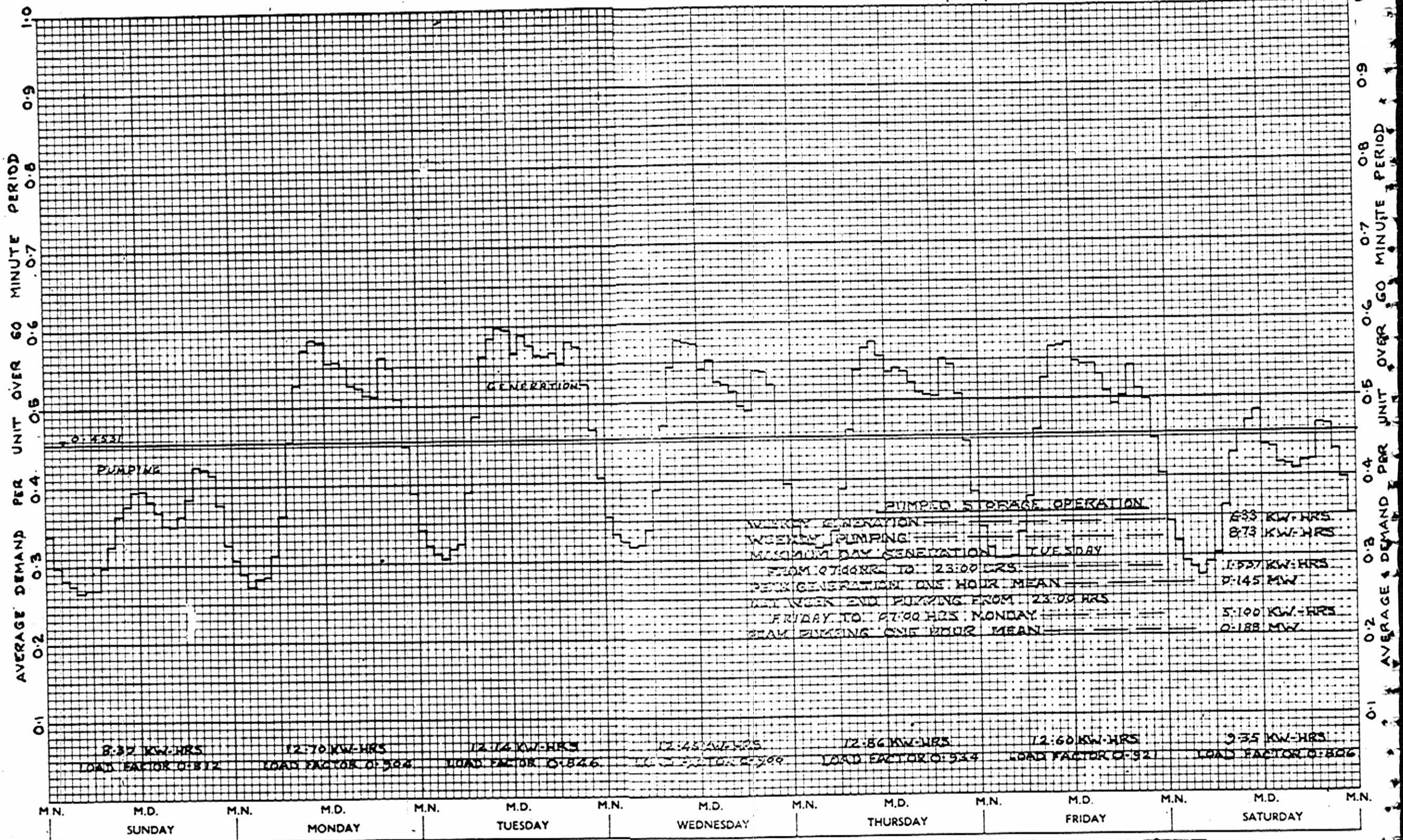
+ Includes spinning reserve, at Sweetwater, and obligatory reserve, at both Sweetwater and Oak Creek, for total system load: see Table 14

JA 576

1980



[4997]



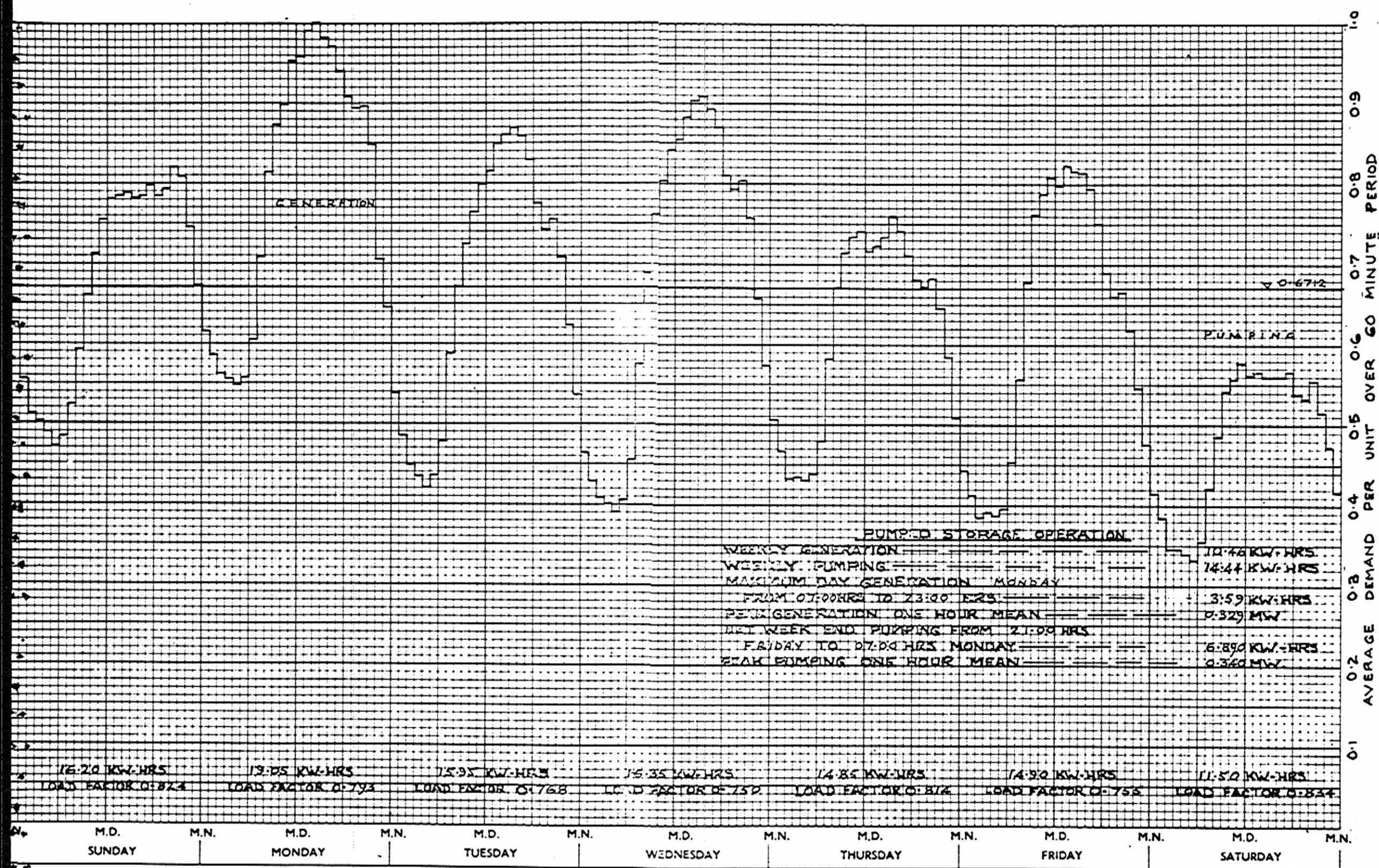
TOTAL FOR WEEK 73.6 KW-HRS — LOAD FACTOR 0.734 — RATIO MAX. LOAD TO MIN. LOAD 2.26

OMAHA PUBLIC POWER DISTRICT - NEBRASKA

SAMPLE WEEKLY REFERENCE SYSTEM LOAD SHAPE FIRST FULL WEEK APRIL JA 578
 BASED ON SCHEDULE 15 FOR FIRST FULL WEEK APRIL 1964 SUBMITTED TO F.P.C.
 1.0 EQUALS MAXIMUM ANNUAL INTEGRATED PEAK LOAD OVER 60 MINUTE PERIOD

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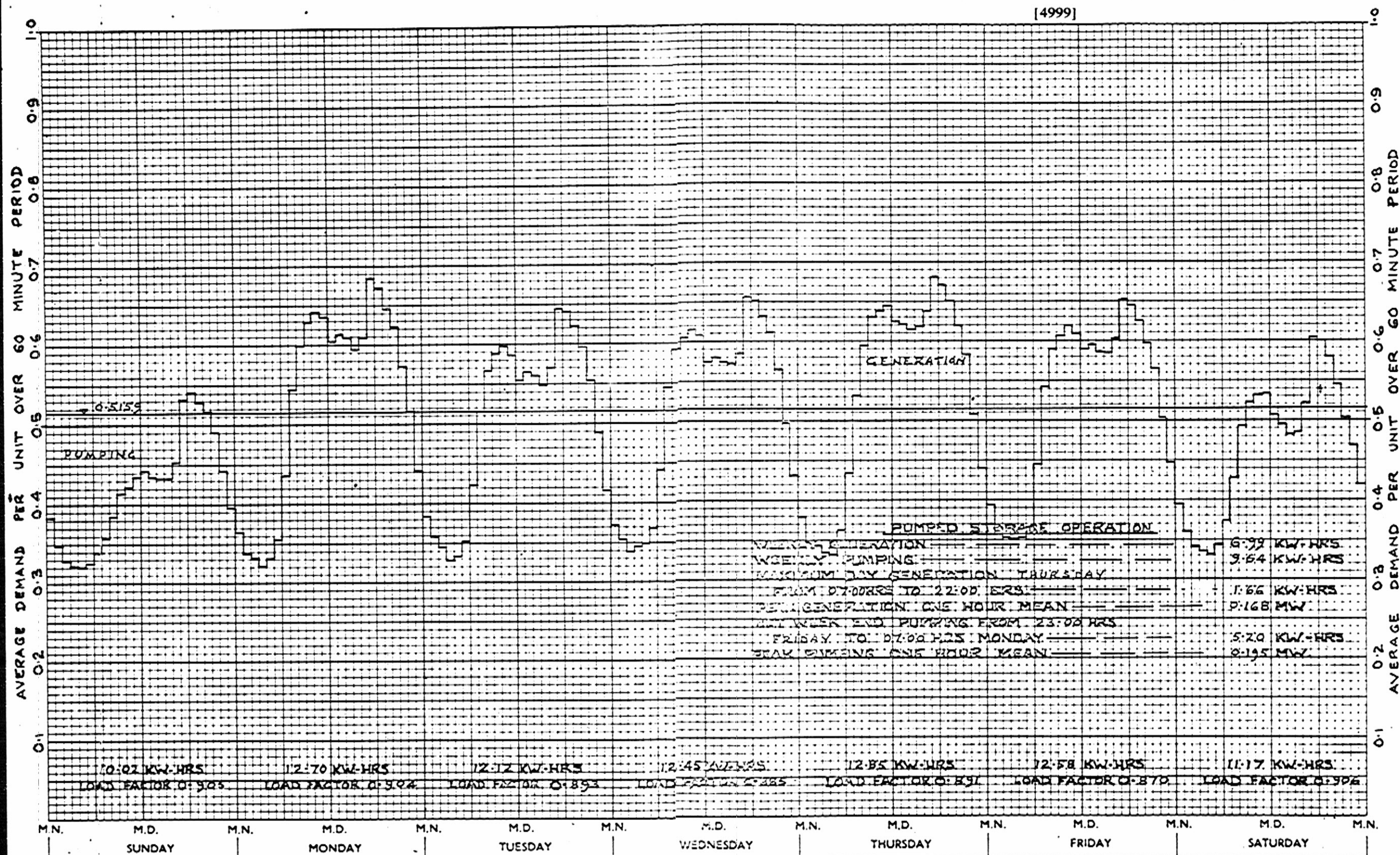
TOTAL FOR WEEK 108.7 KW-HRS — LOAD FACTOR 0.647 — RATIO MAX. LOAD TO MIN. LOAD 3.07

OMAHA PUBLIC POWER DISTRICT - NEBRASKA

SAMPLE WEEKLY REFERENCE SYSTEM LOAD SHAPE FIRST FULL WEEK AUGUST
 BASED ON SCHEDULE IS FOR FIRST FULL WEEK AUGUST 1964 SUBMITTED TO F.P.C.
 1.0 EQUALS MAXIMUM ANNUAL INTEGRATED PEAK LOAD OVER 60 MINUTE PERIOD

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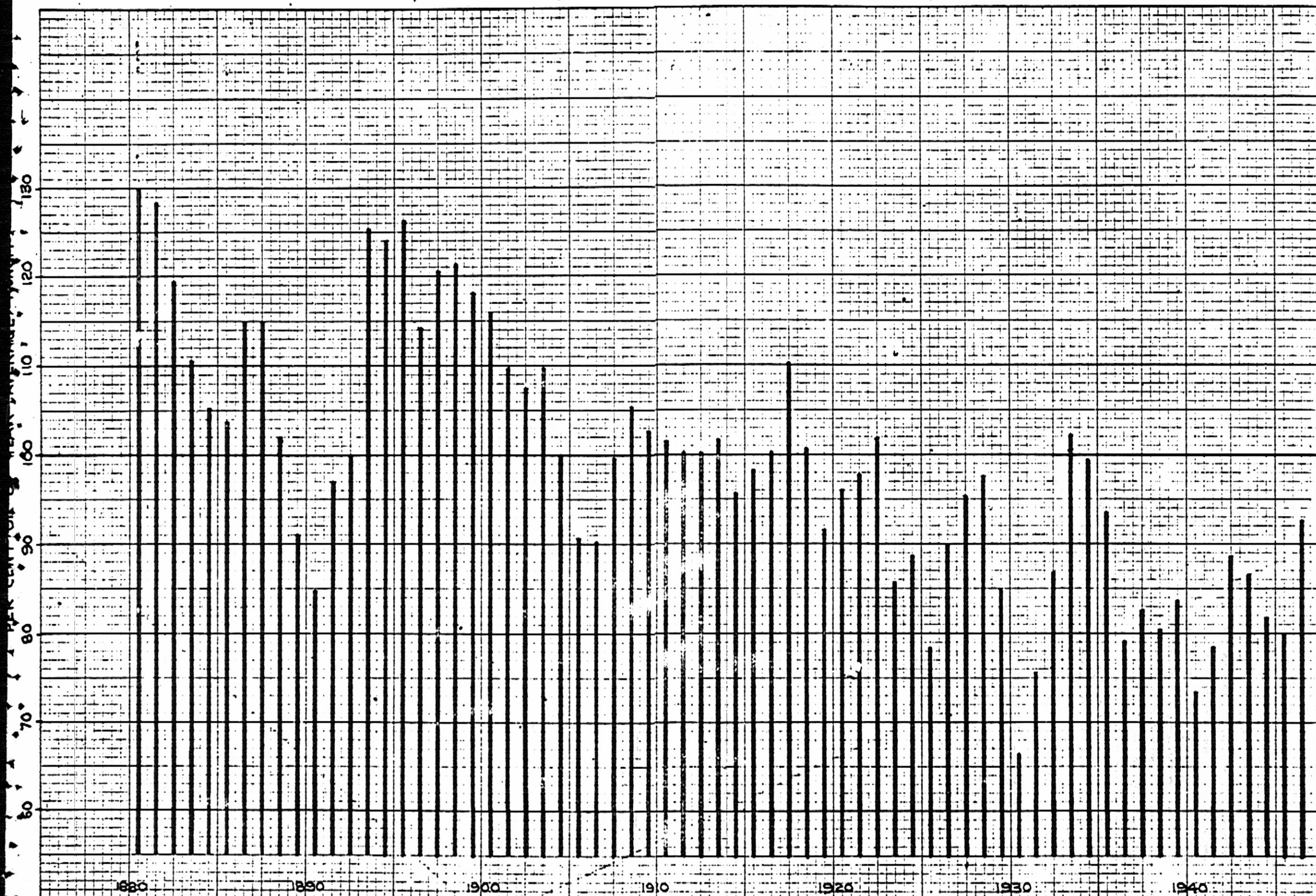


TOTAL FOR WEEK 84.0 KW-HRS — LOAD FACTOR 0.732 — RATIO MAX. LOAD TO MIN. LOAD 2.73
OMAHA PUBLIC POWER DISTRICT - NEBRASKA

SAMPLE WEEKLY REFERENCE SYSTEM LOAD SHAPE FIRST FULL WEEK DECEMBER
 BASED ON SCHEDULE 15 FOR FIRST FULL WEEK DECEMBER 1964 SUBMITTED TO F.P.C.
 1.0 EQUALS MAXIMUM ANNUAL INTEGRATED PEAK LOAD OVER 60 MINUTE PERIOD

JA 580

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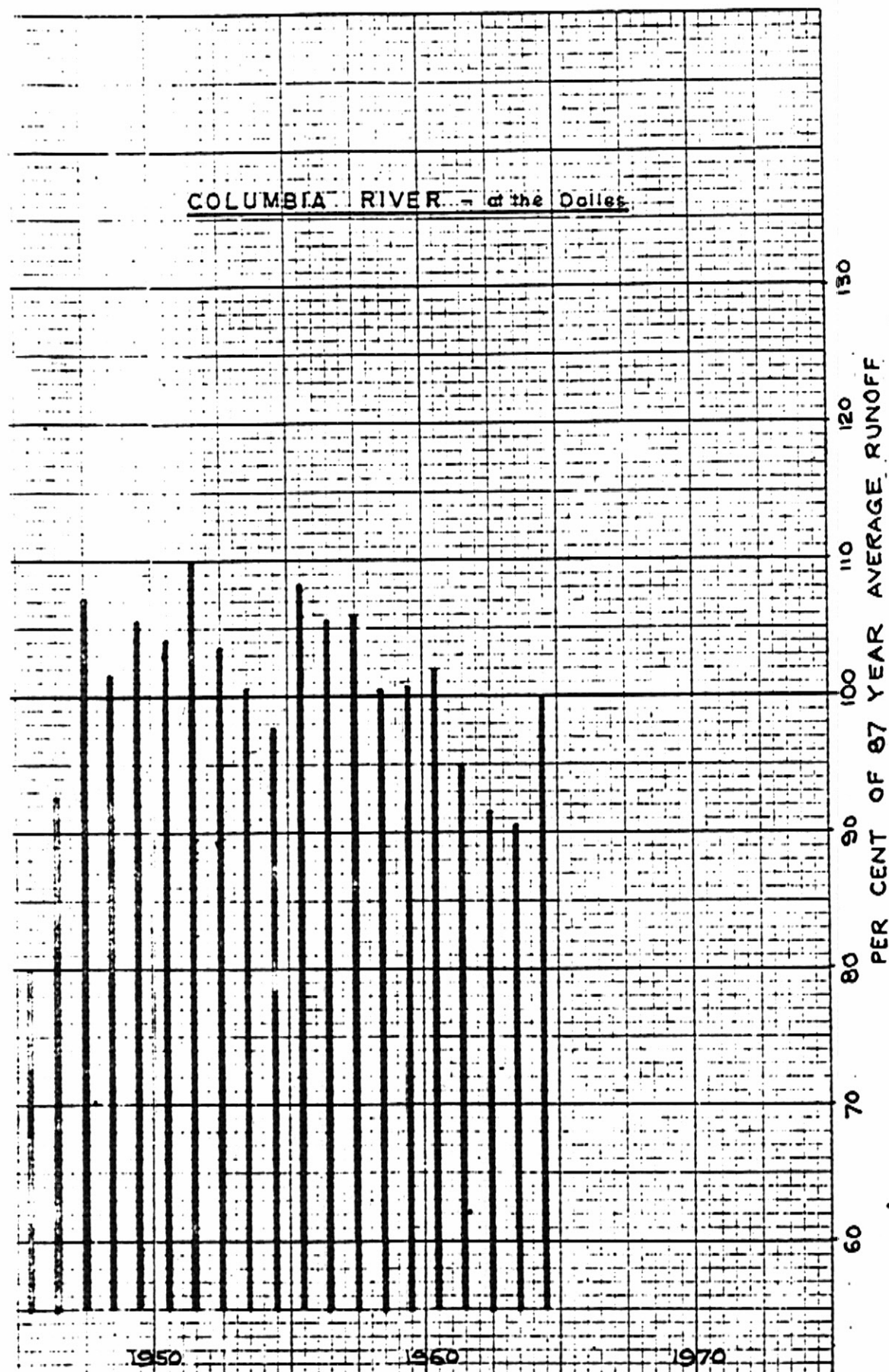


HYDROGRAPH THREE YEAR RUNNING AVERAGES COLUMBIA RIVER AT THE DALLES
FROM COLUMBIA BASIN INTERAGENCY COMMITTEE LETTER FEB. 2, 1967.

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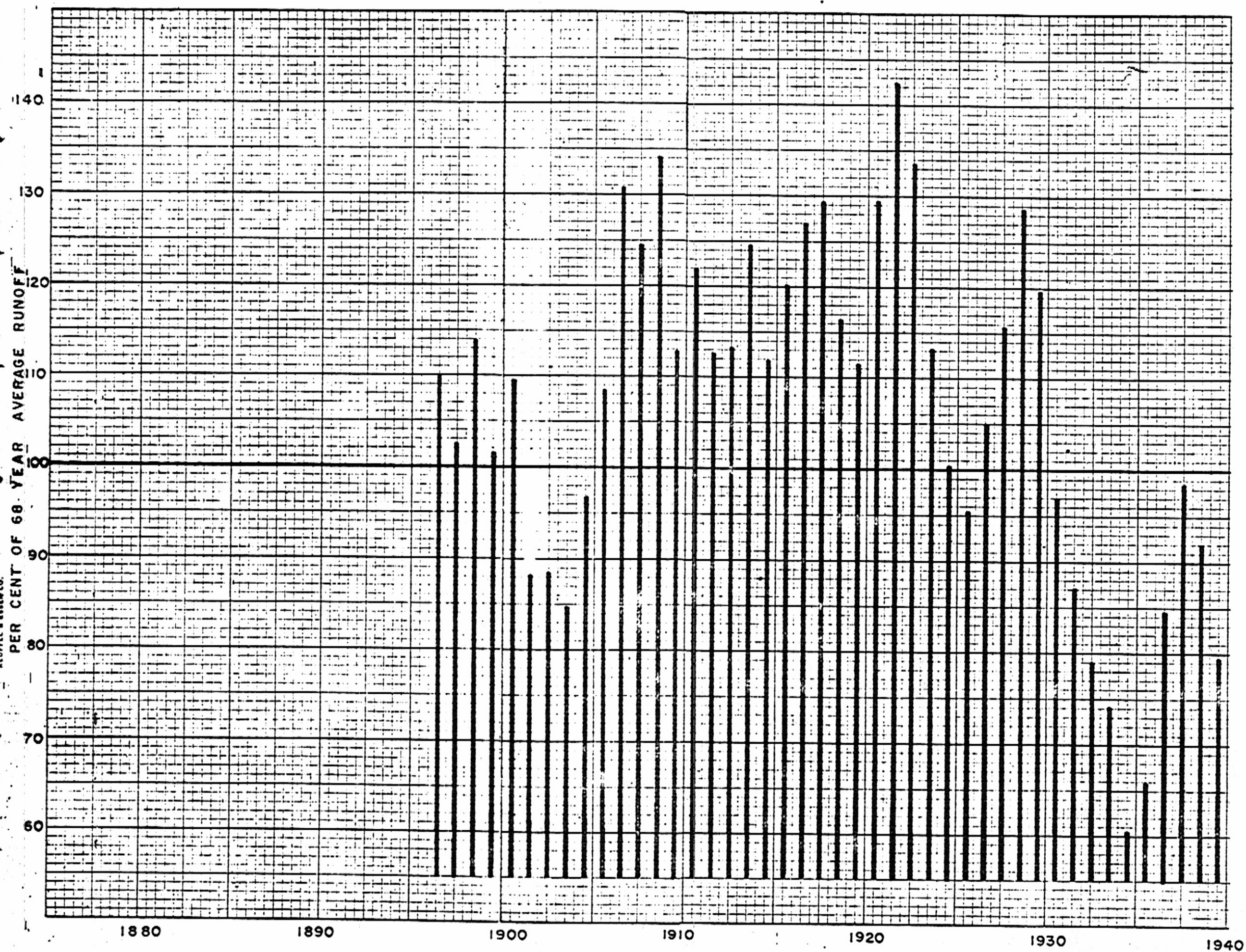
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[5000]



JA 582

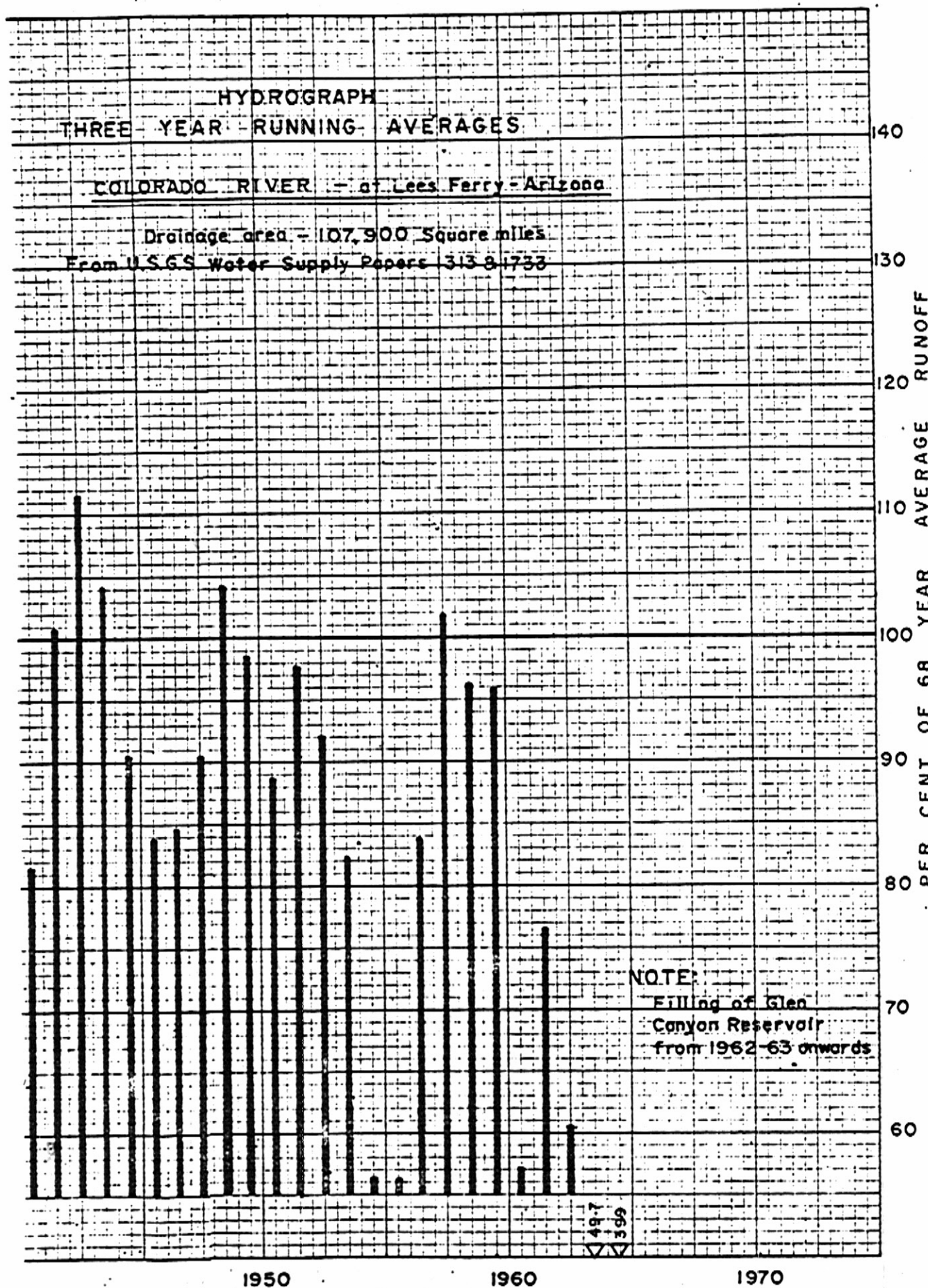
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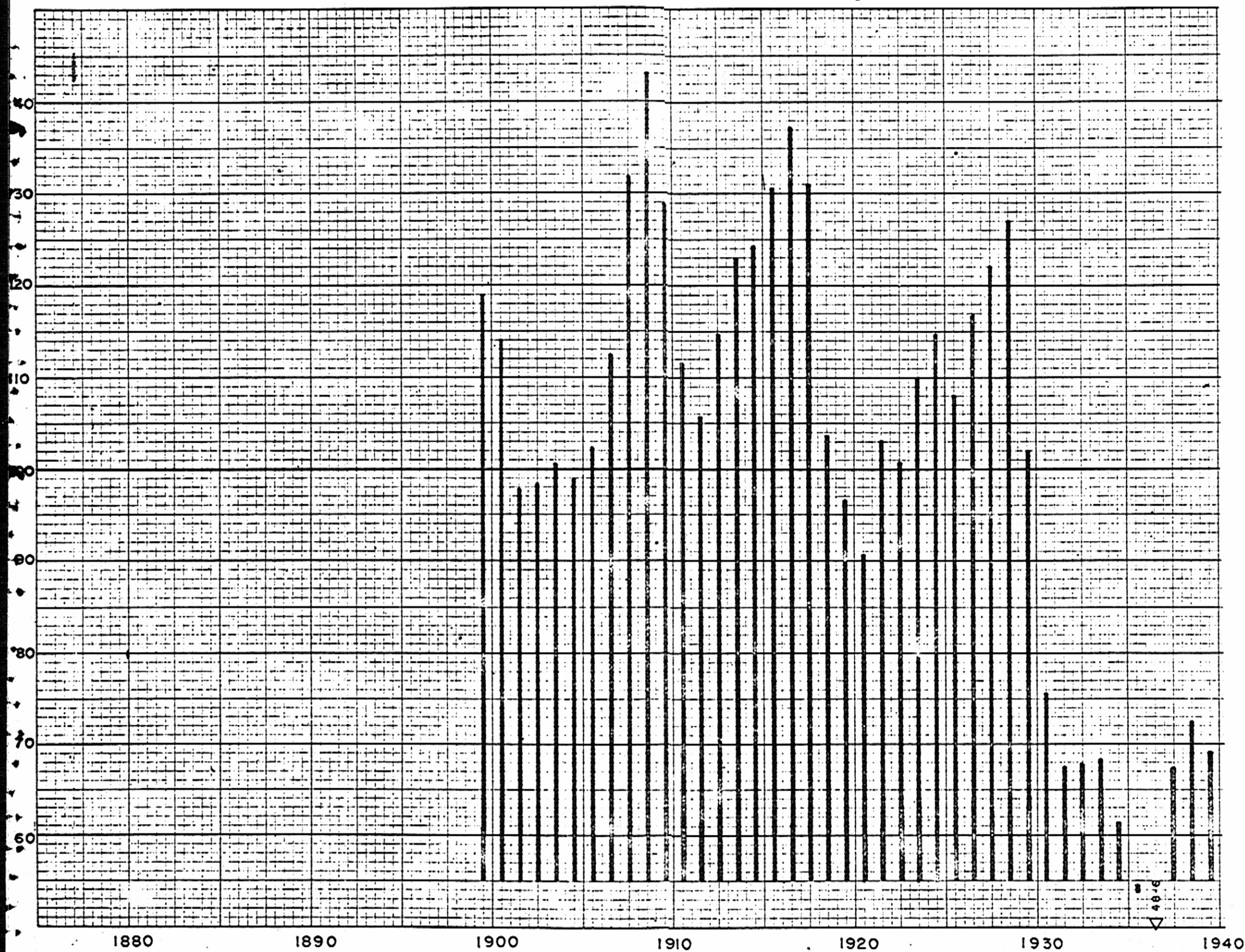
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[5001]

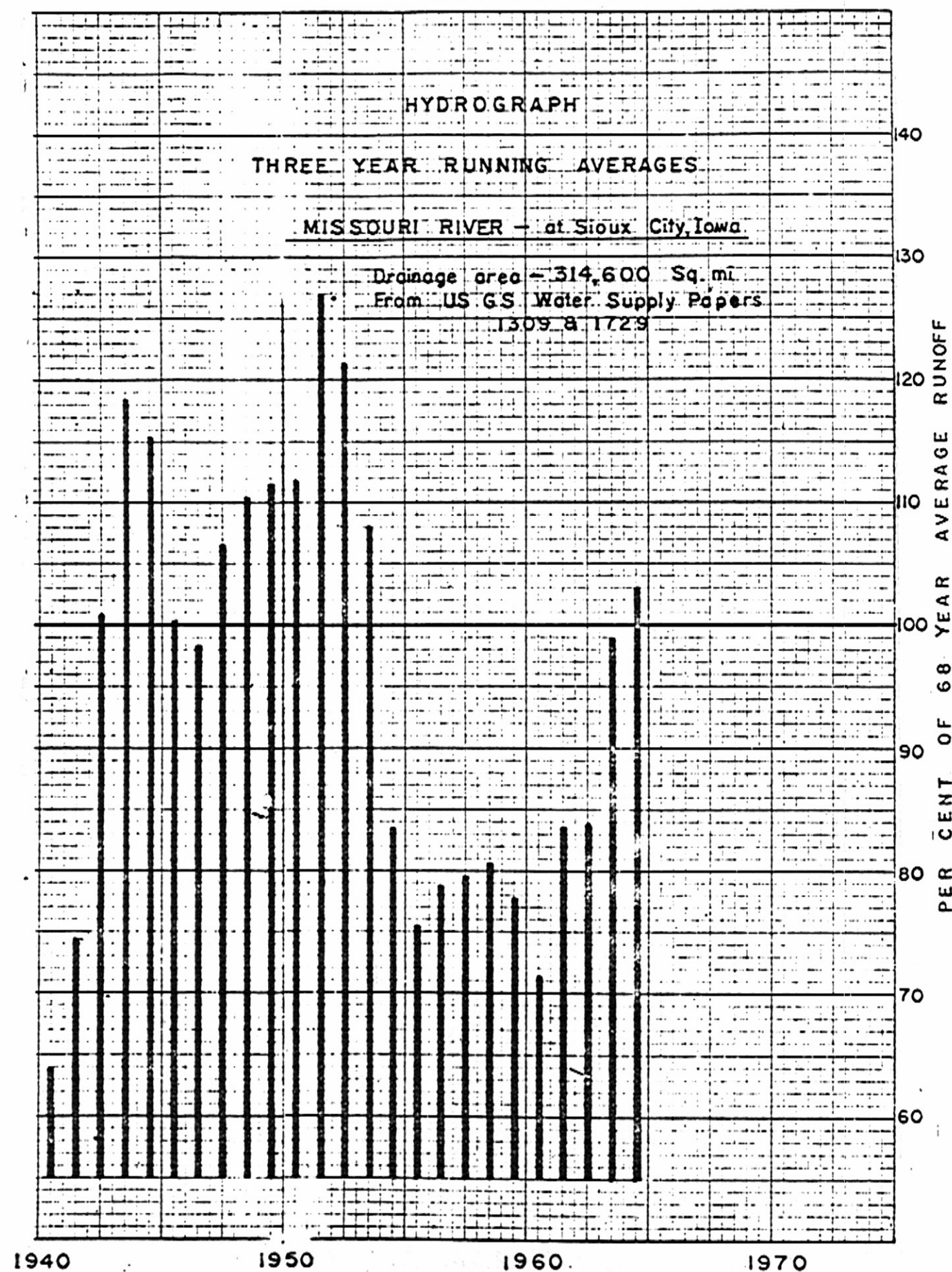


JA 584

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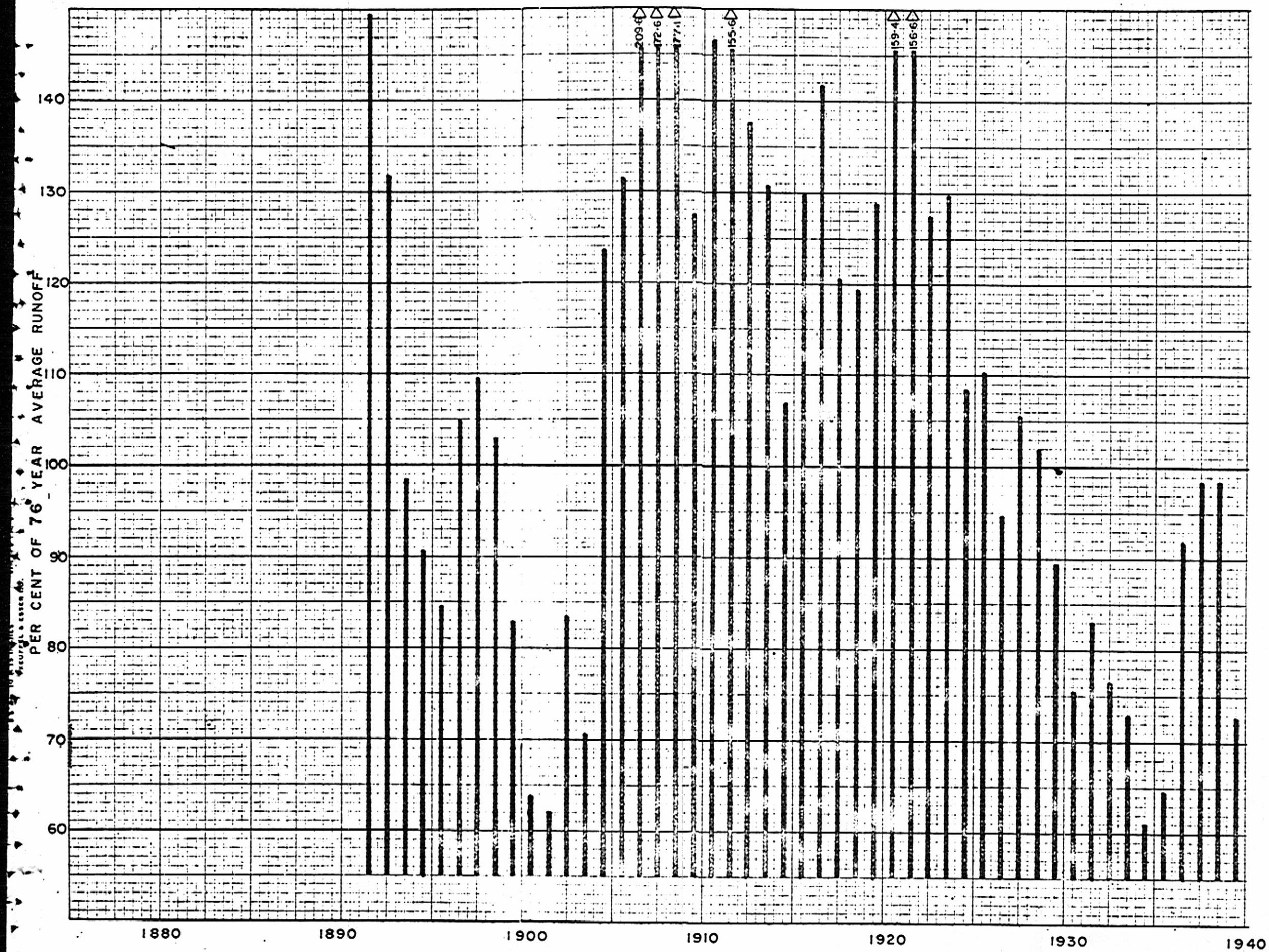


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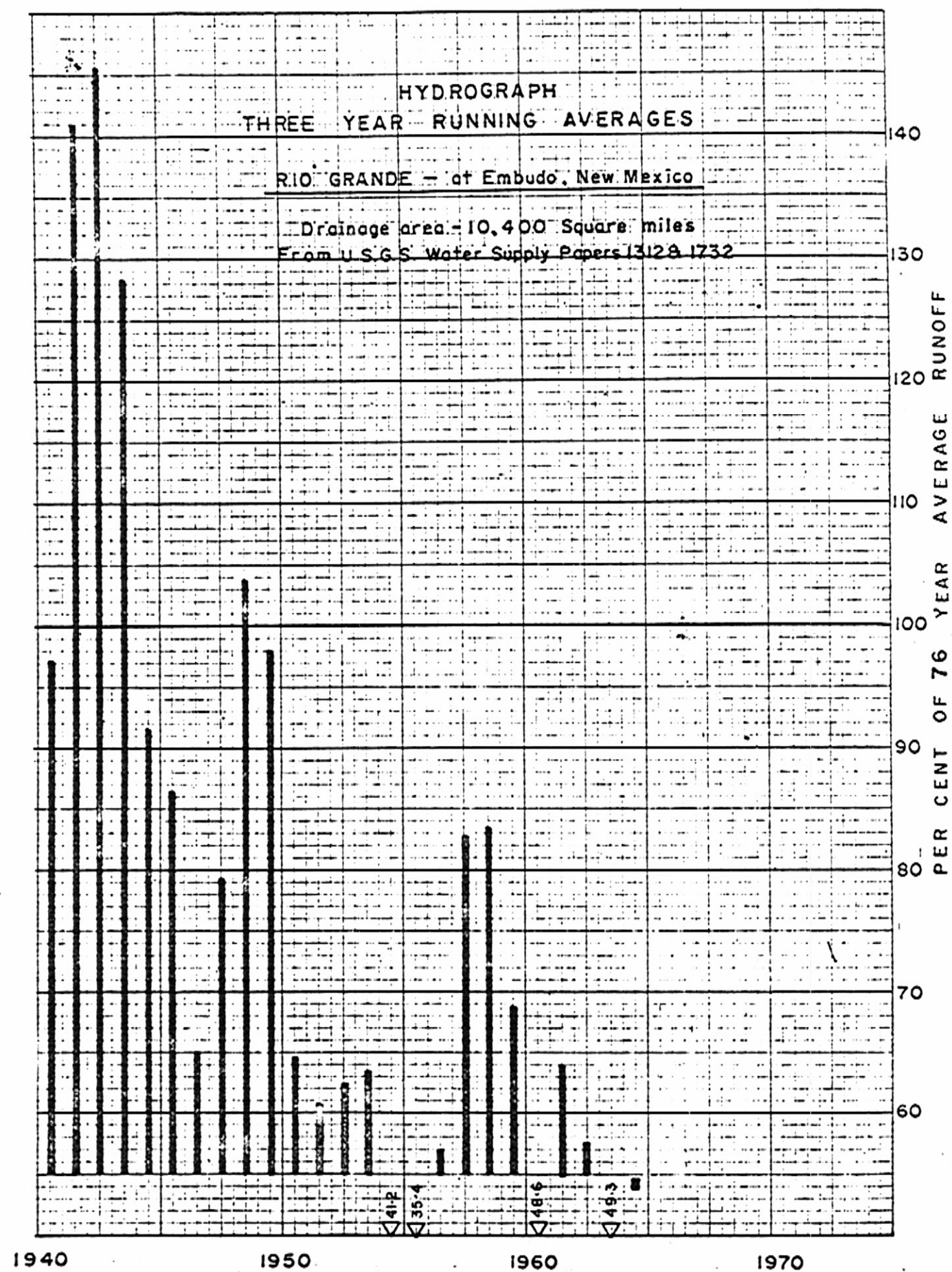


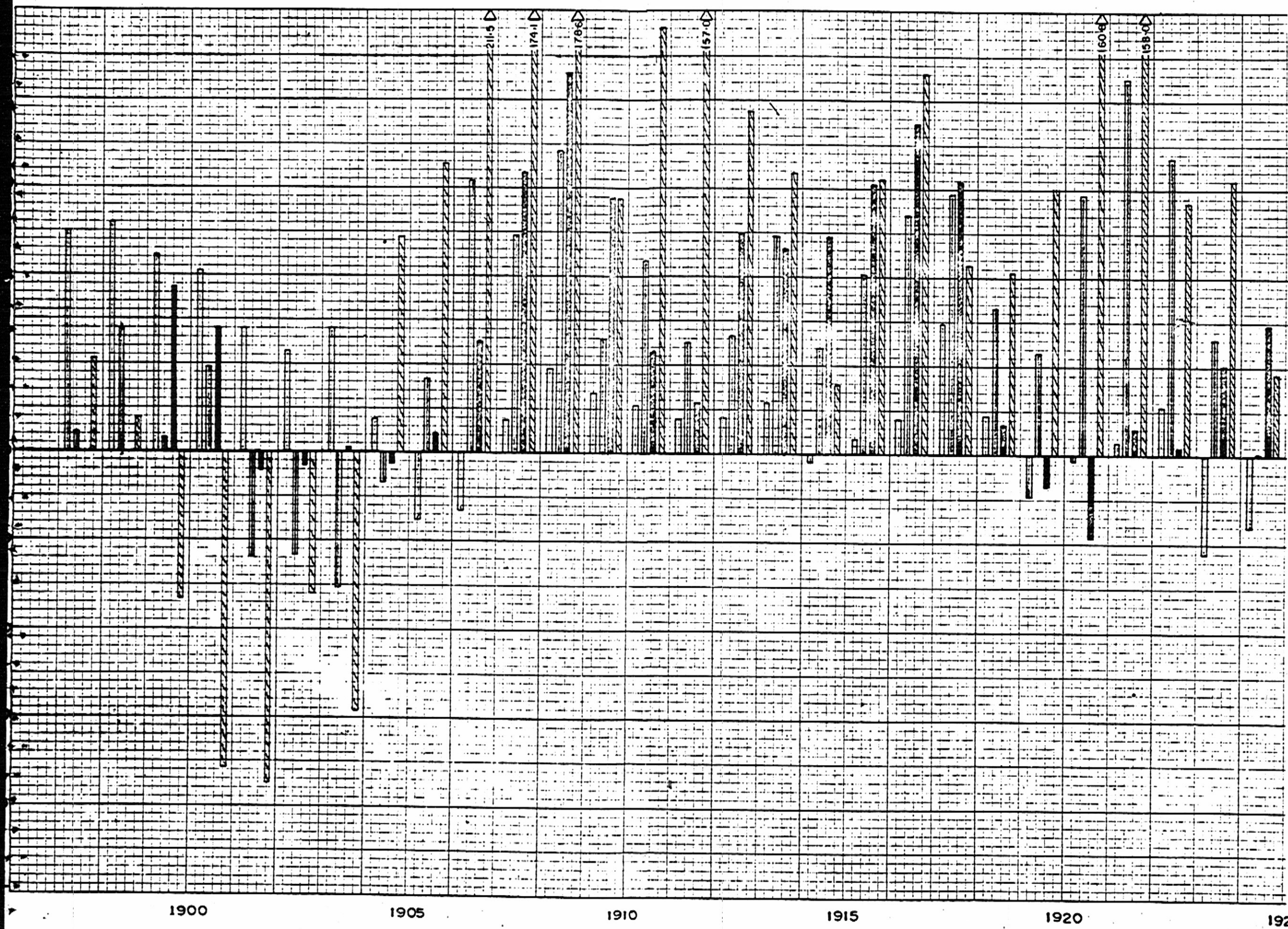
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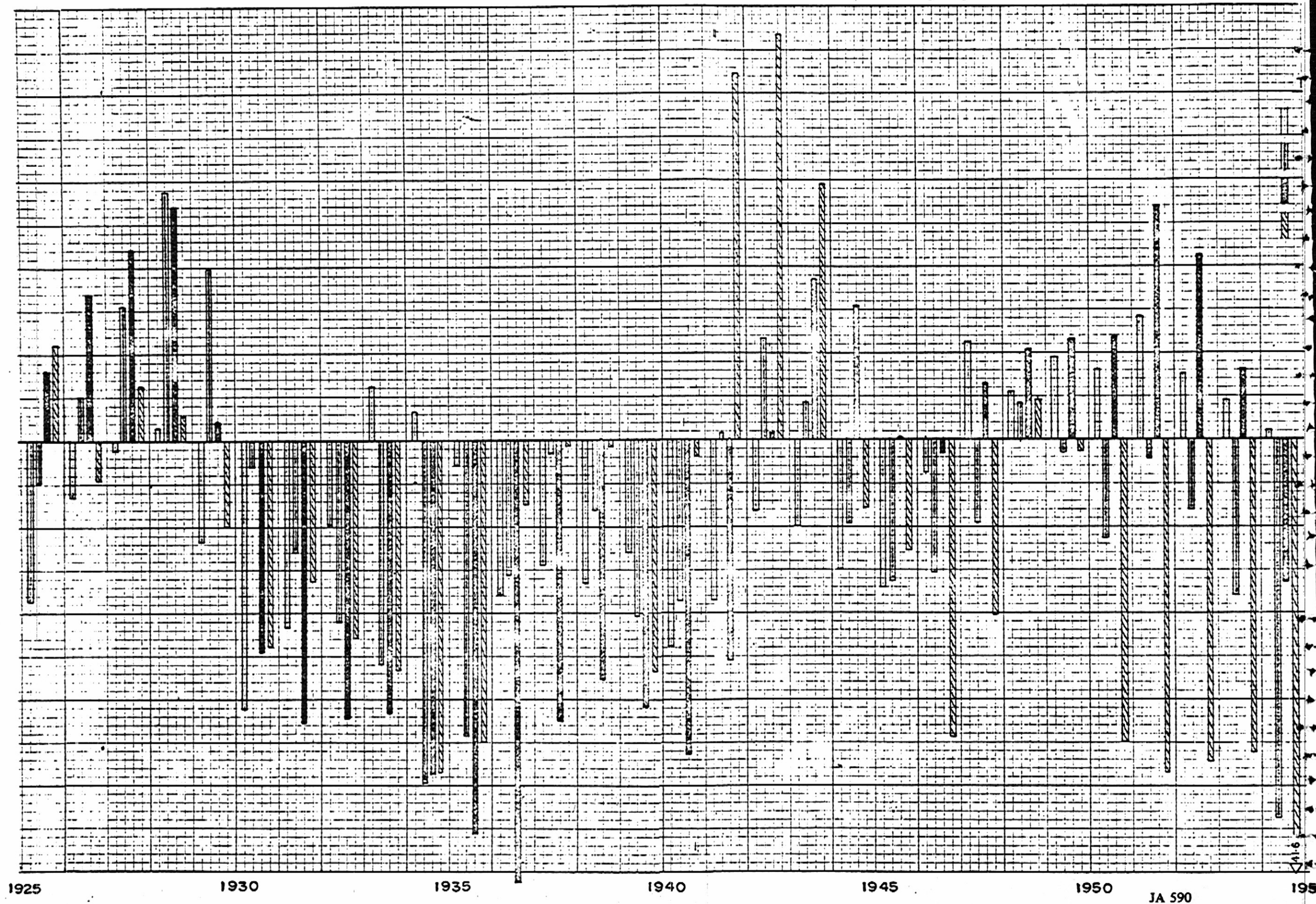


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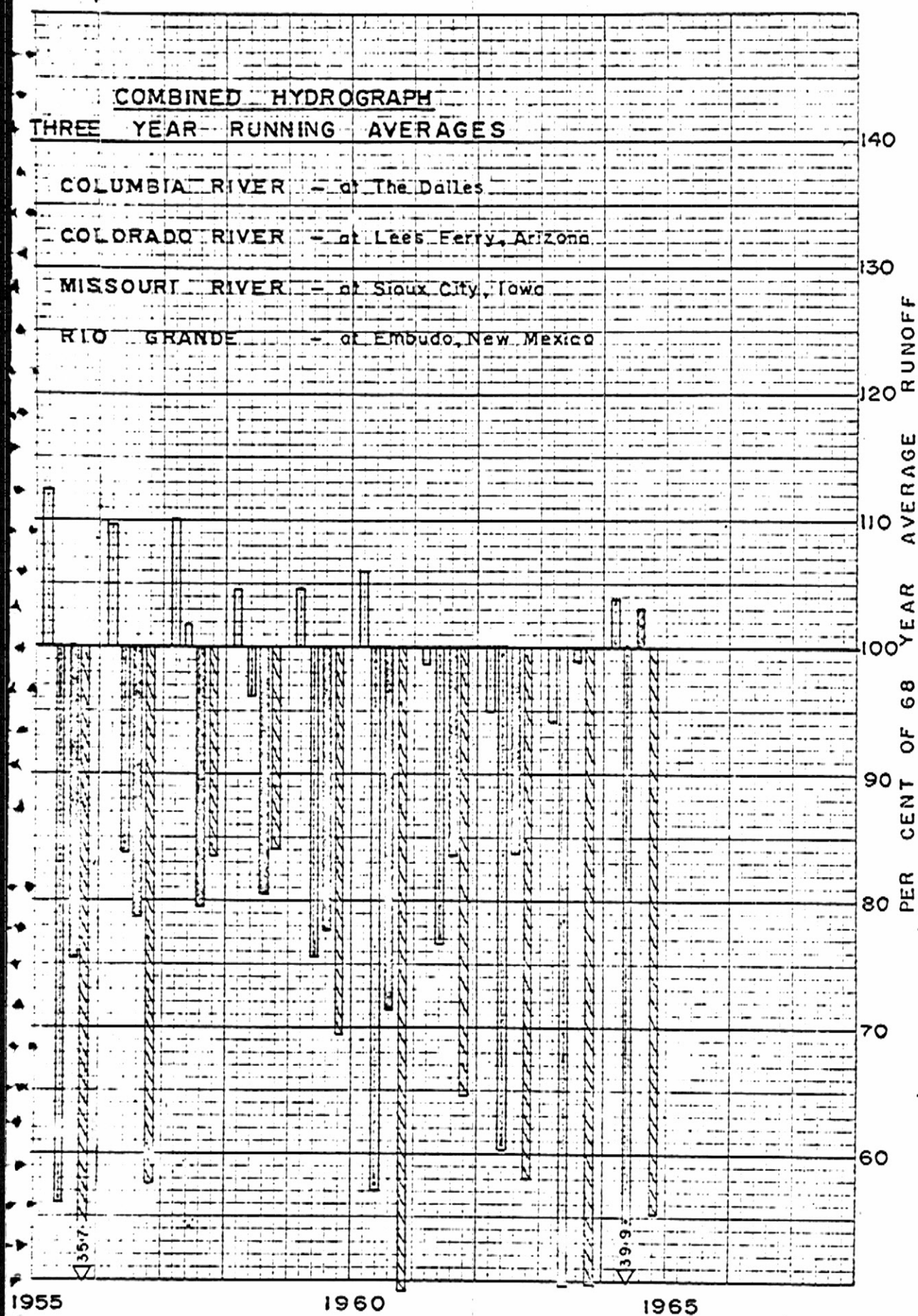




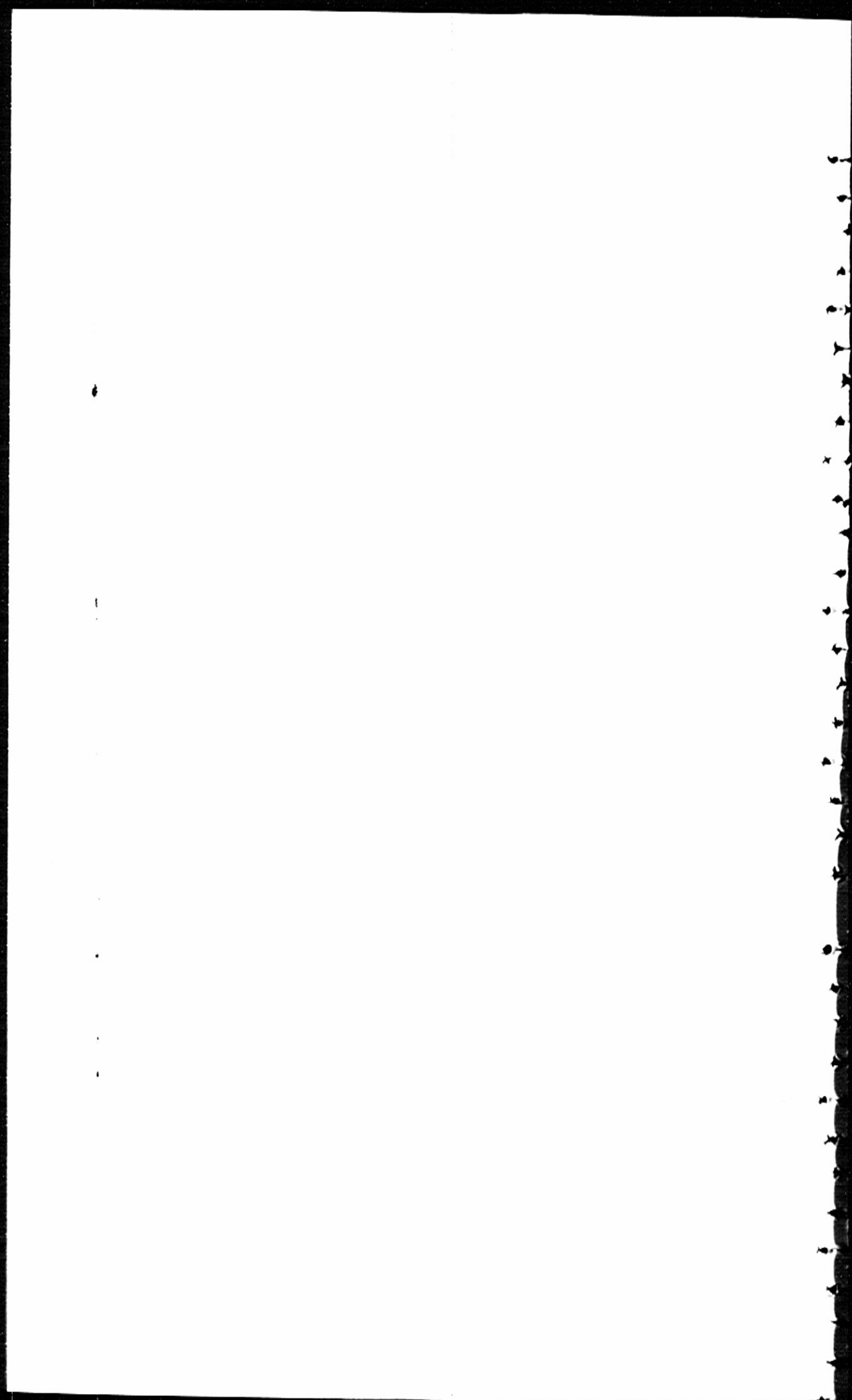
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[5007]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Lee C. White, Chairman; L. J.
O'Connor, Jr., Charles R. Rose,
and Carl E. Bagge.

Rocky Mountain Power Company) Project No. 2289

ORDER GRANTING RECONSIDERATION
AND REHEARING

(Issued April 13, 1967)

On February 16, 1967, the Commission issued its Opinion No. 514 dismissing the application by Rocky Mountain Power Company for a license for a hydroelectric power project. On March 13, 1967, the Nebraska Power Review Board, an agency of the State of Nebraska, filed a motion for reconsideration of the order entered in Opinion No. 514. On March 20, 1967, Rocky Mountain Power Company filed an application for reconsideration of the order of dismissal and reinstatement of the application.

Solely for the purpose of allowing us an opportunity to give full and adequate consideration to the motion and application for reconsideration we grant the motion and application for consideration without at this time reinstating the application. In view of the reason for granting reconsideration and rehearing no answering filings are necessary.

The Commission orders:

The motion for reconsideration filed by the Nebraska Power Review Board and the application for reconsideration filed by Rocky Mountain Power Company with respect to our Opinion No. 514 are hereby granted for purposes of adequate consideration by the Commission.

By the Commission.

(S E A L)

Joseph H. Gutride,
Secretary.

[5008]

[5008]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Lee C. White, Chairman; L. J.
O'Connor, Jr., Charles R. Ross,
and John A. Carver, Jr.

Rocky Mountain Power Company) Project No. 2289

ORDER CONFIRMING DISMISSAL OF APPLICATION
AND DENYING APPLICATION FOR REINSTATEMENT

(Issued May 15, 1967)

On February 16, 1967, the Commission granted a motion to dismiss Rocky Mountain Power Company's application for license of a hydroelectric project in Colorado (Opinion No. 514). The Commission determined that Applicant had failed to show the financial feasibility of the project and that it also had failed to show that a market existed for the power. Nebraska Power Review Board (Board) was granted intervention at the same time.

On March 13, 1967, the Board filed a motion for reconsideration of the Commission's order of dismissal. On March 20, 1967, Applicant filed an "Application for Reconsideration of Application." On April 12, 1967, we granted the motion and application for reconsideration for the purpose of allowing full and adequate consideration, without reinstating the application.

The Nebraska Power Review Board's motion for reconsideration reiterates its concern over the power deficiency which it believes will exist in Nebraska during the coming summer and for a number of years thereafter. It also cites a mandatory wheeling bill which at the time of filing was being considered by the legislature which would facilitate the importation of power from out-of-state sources. In view of these considerations, it requests that we keep this proceeding open for further market evidence.

[5009]

We appreciate the concern of the Board over the power supply situation in Nebraska and we would not take any action which would adversely affect that situation. However, as stated in Opinion No. 514 there is in this record no basis for concluding that this project would serve to meet that deficiency,¹ nor that the prospective power deficiency would assure that Rocky Mountain Power Company will have either a sufficient market or the firm contracts which would enable it to finance the project.

Applicant alleges that it is diligently pursuing contract negotiations with Consumers Public Power District for the sale of power in Nebraska and, in addition, that it has presented to the Missouri Basin Systems Group proposals and plans by means of which project power could be used in combination with other power-producing facilities available to the Missouri Basin Systems Group to serve all of the power users in the deficient areas of Nebraska and neighboring states. However, all of these plans are still in the proposal stage and Applicant has put forward no tangible evidence which would allow us to reasonably conclude that, based on its present efforts, a market exists or will exist for project power.

Applicant does not ask us to continue the hearing at this time, but merely to hold the record open for an additional period during which it might be able to produce firm commitments and evidence of financing. The Applicant would thus have us place the proceedings in the same status as existed prior to the Commission's order of August 19, 1965, which set this matter for hearing.

Applicant has had more than five years to collect, and full opportunity at hearing to present, evidence of financial feasibility and marketability and has still failed to make the proper showing. Therefore, to allow

¹Legislative Bills 319 and 620, the mandatory wheeling measures pending in the 77th session of the Nebraska Legislature were not enacted during that session.

[5010]

[5010]

these proceedings to hang in abeyance while Applicant attempts once again to meet the requisite evidence would only thwart the administrative process and would be inconsistent with our statutory duties.

Applicant states that it has negotiated contracts with proposed oil shale developers for the use of water after it has served power purposes. These latter contracts might conceivably bear upon the economic feasibility of the project if that were a marginal matter, but in the absence of any showing of markets or financing they are certainly not enough to warrant further continuance of this proceeding.

We again emphasize that our action in dismissing this application is without prejudice to the filing of a new application at any time in the future Applicant believes it can meet the threshold requirements.

The Commission finds:

The assignments of error and grounds for rehearing or reconsideration set forth in the Motion for Reconsideration filed herein by Nebraska Power Review Board and the Application for Reconsideration of Order of Dismissal and for Reinstatement of Application filed herein by Applicant present no facts or legal principles which would warrant any change in our modification of the Commission's Opinion No. 514 and accompanying Order.

The Commission orders:

Upon reconsideration, the Order of Dismissal of February 16, 1967, is confirmed, and the motion for reinstatement of application filed herein by Applicant is denied.

By the Commission. Commissioner Ross dissenting filed a separate statement appended hereto.

(S E A L)

Gordon M. Grant,
Acting Secretary.

[5011]

Rocky Mountain Power Company) Project No. 2289

(Issued May 15, 1967)

ROSS, Commissioner, *dissenting*:

The grounds stated by the majority's order denying reconsideration to Rocky Mountain (applicant) lead me to add to my original dissent in this matter.

In the order issued in February, 1967, the majority felt "it incumbent upon [themselves] to bear in mind the present and *potential* needs and supplies of power in Nebraska in disposing of this application."¹ Since the issuance of the majority's initial decision, the Nebraska Power Review Board, which is an intervenor in these proceedings, has emphatically asked the Commission in a motion for reconsideration "to keep said application open" so the applicant would be given an opportunity to present additional evidence and continue negotiations with Consumers Public Power District and other Nebraska suppliers. The Board's motion clearly states that Nebraska's electrical deficiency is of a long-term nature and will not be taken care of by the proposed generation facilities within the state and enumerated by the majority. Indeed, the Nebraska legislature is presently considering a bill involving wheeling that "would make feasible the *importation of desperately needed* low-cost power" from out-of-state facilities like the applicant's.

What more does the majority need to allow the case to proceed? Certainly, the Commission's own regulations contemplate no such rigorous standard as the majority is imposing upon the present applicant. Regulation 4.40(i) of the Federal Power Act states:

" . . . In case the applicant can give no positive assurance that there is or will be a demand for the power upon completion of

¹Page 4 of majority opinion. Emphasis added.

[5012]

[5012]

construction of the project, and that it will be used or distributed by the applicant or sold to others for use or distribution, a full and complete statement and explanation shall be made of the applicant's *expectations* in this regard and of the basis therefor." (emphasis added)

I recognize that this is a regulation pertaining to the filing of an application, but at what point does the applicant's burden become the more substantive burden that the majority seems to require in this case? The rules do not so state; if the majority intends, however, that every licensee be required to meet a more rigorous showing than that implied in Regulation 4.40(i) during the course of its license proceeding, the rules should be so amended to state explicitly to the applicant its obligations.

Furthermore, it seems to me that the majority's rationale here, in essence, eliminates the possibility for a "middle man" in the power supply field. By dismissing applicant's case because there is no definite indication that "users...in Nebraska will purchase an amount" from the project, the majority seems to tie the feasibility of a project to the load growth of one utility or a formal group of utilities. However, because of restrictions on the location of their facilities within the boundaries of the state or because they are unable to enter into contracts with non-contiguous territories by operation of state law, the utilities may not be able to undertake certain economical projects. Such projects can often be built by "middle men," like the applicant. Such middle men may be able to draw upon various buyers in the area, often enhancing the development of the project. There are benefits to the buyers, too, who can buy in lesser quantities more tailored to their individual needs and still share in the benefits stemming from large-scale operations. In this very case, the applicant states that in November of 1966 it presented its proposal, by invitation, before the Missouri

[5013]

Basin Systems Group, a planning organization representing numerous municipalities and cooperatives in Minnesota, Nebraska, North Dakota, Colorado, Iowa, Montana, South Dakota, as well as the U. S. Bureau of Reclamation.

Negotiations for power sales are time-consuming, and the orderly procedure of Commission business must be maintained. However, the Commission is aware of the power shortage in the area and has itself emphasized the need for long-range plans to meet increasing power demands.

One other consideration is worth noting. In addition to the considerable time and expense already expended on this case by the applicant, the power suppliers, the courts, the Forest Service, the state commissions, the Interior Department and this Commission, the applicant has finally been able to secure a favorable adjudication of its water rights, giving it priority over the claims of another party. Dismissing the case now may deprive the applicant of an essential element in the successful presentation of its license application. For all these reasons, I would dissent.

/s/ Charles R. Ross
Charles R. Ross, Commissioner

BRIEF FOR PETITIONER

In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 21,138

ROCKY MOUNTAIN POWER COMPANY,

Petitioner,

v.

FEDERAL POWER COMMISSION,

Respondent.

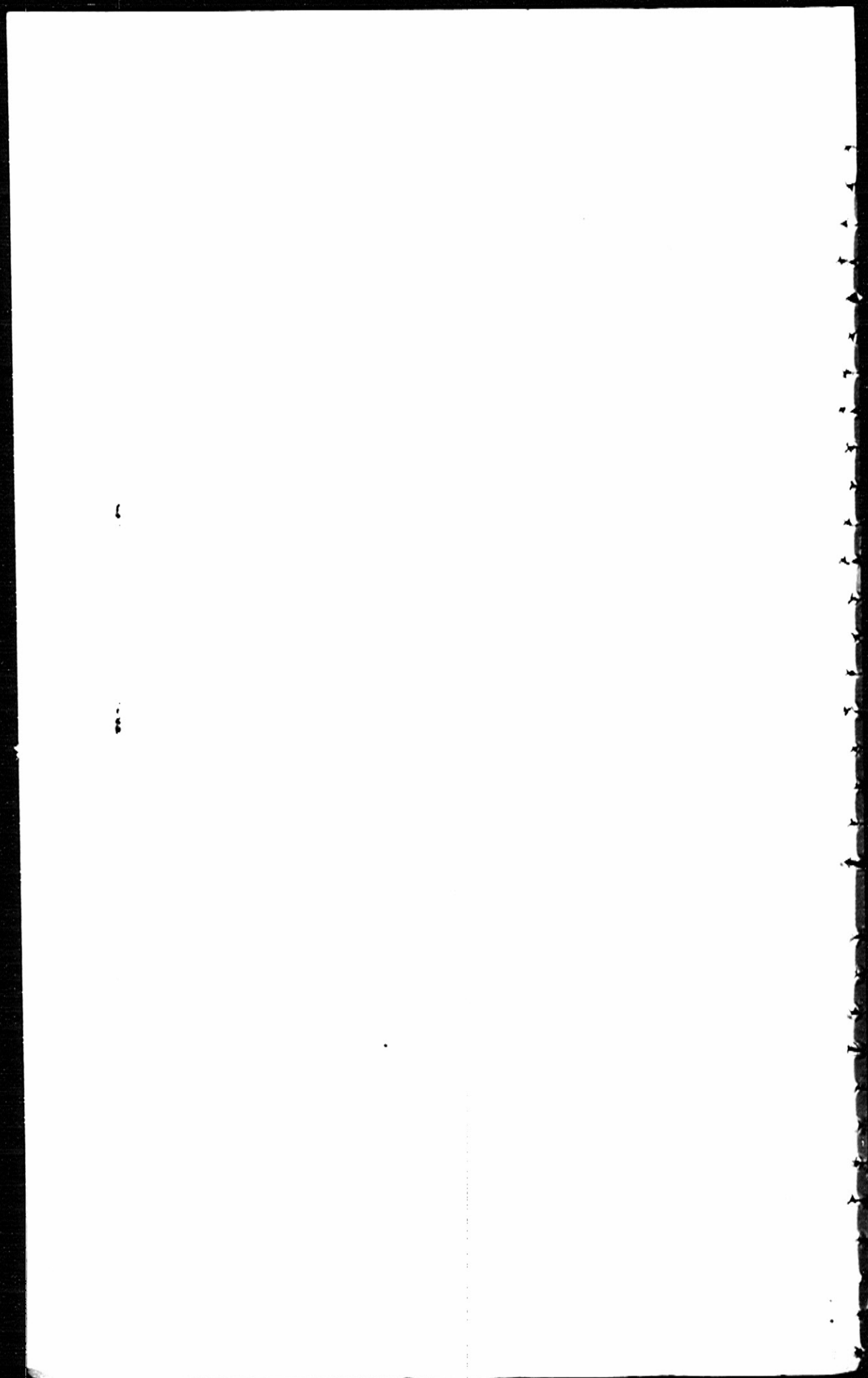
**PETITION FOR REVIEW OF AN ORDER
OF THE FEDERAL POWER COMMISSION**

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 23 1967

Nat'l J. Paulson
CLERK

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(i)

STATEMENT OF QUESTIONS PRESENTED

1. Was the dismissal by Federal Power Commission of Petitioner's application for license to generate hydroelectric power in Colorado for transmission to Nebraska arbitrary, unreasonable, precipitous, contrary to the public interest and in violation of Section 10(a) of the Federal Power Act and of the Commission's statutory duty to evaluate the merits of such projects and proposals; said dismissal being based solely upon a finding, reached without hearing, that "the evidence submitted by applicant in support of the availability of a market for the power proposed to be produced by the project and evidence of ability to finance the project is inadequate to support the application", and notwithstanding the motion by the Intervenor, Nebraska Power Review Board, requesting that Petitioner's application be allowed to remain open to afford applicant adequate opportunity to conclude pending negotiations with Consumers Public Power District and other Nebraska power distributors engaged in efforts to fulfill presently existing and well established future electric power requirements in Nebraska and also in face of the pendency before the Nebraska State Legislature of bills and measures designed to facilitate and implement the importation of desperately needed low-cost power from out-of-state facilities, such as those being proposed and offered by applicant?

2. Did the Federal Power Commission exceed its lawful authority in entertaining and acting favorably upon the motion to dismiss Petitioner's application filed by the Intervenor, Public Service Company of Colorado, which Intervenor on the face of the record, unequivocally negates any intention or desire to serve the Nebraska or any power market outside of the State of Colorado, and is attempting only to illegally restrain interstate commerce and monopolize power resources contrary to the prohibitions of the Federal Power Act, 16 U.S.C. 803(h), and the Sherman Anti-trust Act, 15 U.S.C. 1-7?

(ii)

3. Did the Federal Power Commission violate its authority by entertaining and acting favorably upon the motion to dismiss Petitioner's application filed by the Intervenor, Colorado River Water Conservation District, in the absence of any showing by the District of its intention or capability to generate, transmit or in anywise deal in electric power or any showing that the proposed project is in anywise contrary to the public interest?

(iii)

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(iv)

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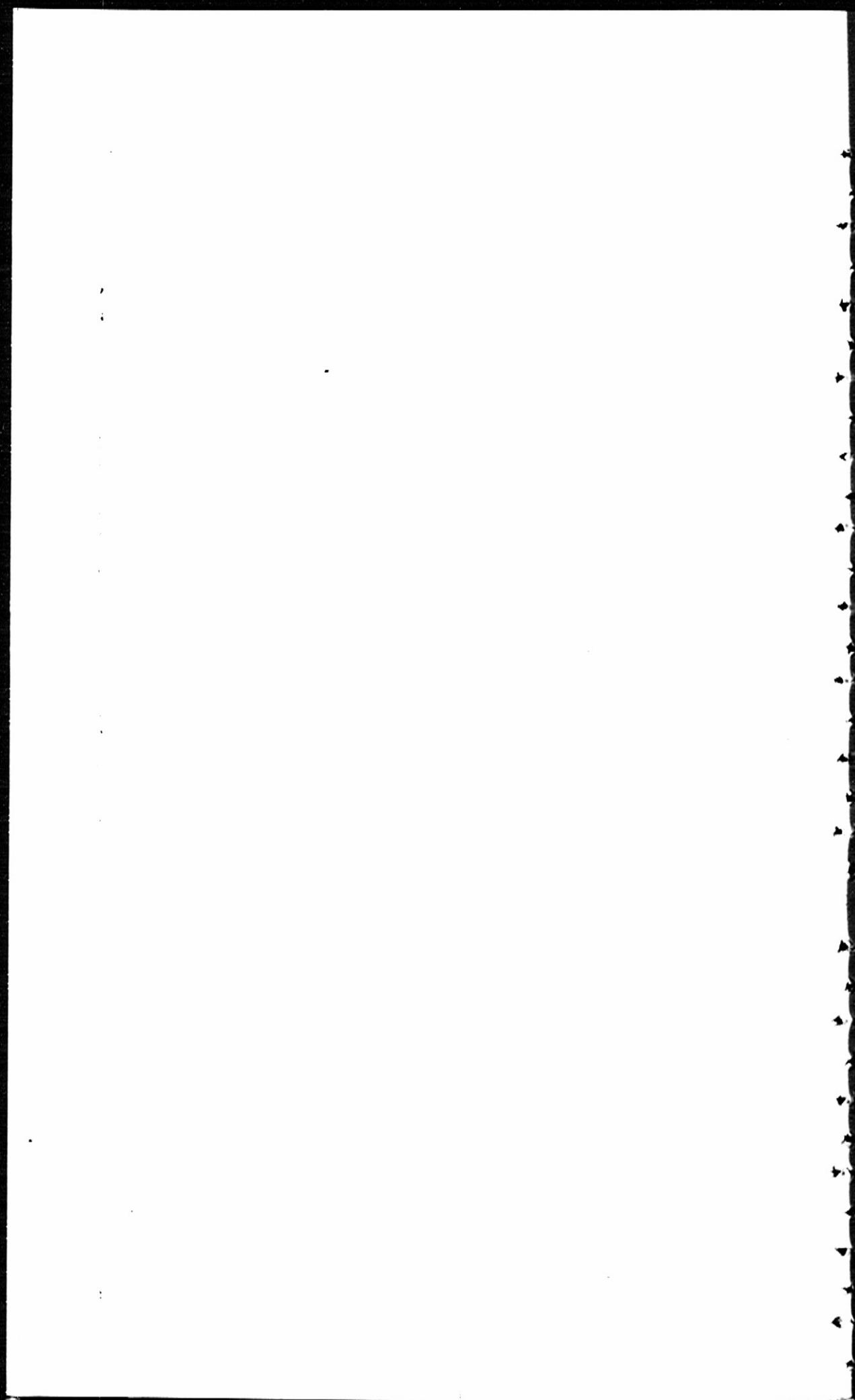
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In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 21,138

ROCKY MOUNTAIN POWER COMPANY,

Petitioner,

v.

FEDERAL POWER COMMISSION,

Respondent.

*PETITION FOR REVIEW OF AN ORDER
OF THE FEDERAL POWER COMMISSION*

BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

This is a petition for review of an order of the Federal Power Commission dismissing Petitioner's application for a license under the Federal Power Act.

On May 15, 1967, Respondent, Federal Power Commission issued its order in the matter of the application of Rocky Mountain Power Company for a license and confirmed Respondent's earlier order issued February 16, 1967 (Opinion NO. 514), which granted a motion to dismiss the application of Petitioner for a license for hydroelectric power, Project No. 2289, on the Federal Power Commission docket.

This court has jurisdiction pursuant to Section 313(h) of the Federal Power Act, as amended (16 U.S.C.A. § 825l(b)).

STATEMENT OF THE CASE

Petitioner seeks to set aside the order of February 16, 1967 (Opinion No. 514, R. 4883-92) and May 15, 1967 (confirming the earlier order) (R. 5008-10), of the Federal Power Commission dismissing Petitioner's application for a license for a hydroelectric project. (F.P.C. Docket No. 2289)

The preliminary license application was filed on January 5, 1961 (R. 108-170). This application proposed construction of a conventional hydroelectric generating facility to be situated on Sweetwater Creek, a tributary of the Colorado River in western Colorado. On November 30, 1964, Petitioner filed a revised and amended application for a license to install Stages I and II for a much enlarged project at the same site adopting therein the relatively new pumped-storage concept of hydroelectric power generation (R. 1167-1270). A further amendment was filed on December 31, 1964, for Stage III of the project covering a development of additional peaking capacity based on further application of pumped-storage generation to utilize supplemental stored runoff (R. 1271-1351).

More than \$1,500,000 has been expended by Petitioner in performing the necessary engineering work, field surveys and other technical work, including conduct of successful water rights litigation in the Courts of the State of Colorado and all essential proceedings before various state and federal

administrative agencies. As a result Petitioner has established the engineering feasibility of a pumped-storage hydroelectric power project having a potential peaking capacity of the order of 4,000,000 kilowatts for servicing efficiently and economically, an area of critical electric power deficiency in Nebraska and neighboring States, and also capable for making substantial contributions in the field of water conservation, and related public benefits.

It is especially noteworthy that although the engineering staff of Federal Power Commission and other agencies of government have reviewed the engineering and other technical aspects of the application as dismissed, not one question concerning the engineering capability to produce power efficiently and economically has been raised. Neither does the Public Service Company of Colorado or any other intervenor question the engineering capability of the project to produce power efficiently and economically.

Petitioner has also developed an active interest among responsible electric power distributors and users in the State of Nebraska for the power which would be generated by the project. This interest is of such significance that the Nebraska Power Review Board, a State agency, at the request of the principal distributor in the state intervened and requested the Respondent "to keep said application open" to afford Petitioner an opportunity to present additional evidence and continue negotiations with Consumers Public Power District and other Nebraska suppliers (R. 4899-4909).

The proposed scheme of development for the project sought to be licensed is as follows:

Stage I: The initial pumped storage installation would be developed at Sweetwater Lake. This would include Sweetwater Dam to raise the lake level, the Sweetwater underground power plant, penstocks and penstock tunnel and a forebay. In this first stage, two pump-turbine units would be installed with a generating capacity at minimum head of 165,000 kilowatts, and peak capability of 200,000 kilowatts.

Stage II: The second stage, to follow immediately after Stage I, would involve the installation of the third and fourth units at Sweetwater, increasing the peak capability to 400,000 kilowatts.

Stage III: This stage introduces the storage of runoff from the project area, both by natural inflow and by pumping, for later use both for power generation and consumptive uses. The principal feature of Stage III is the Meadows Reservoir, consisting of a 280 foot high rockfill dam on the upper reaches of the South Fork of the White River. This dam will provide some 124,000 acre feet of usable storage and will permit the impounding of natural runoff of the upstream drainage and additional waters diverted to the reservoir by pumping of waters from other drainage areas within the project.

An additional pumped storage facility, the Lost Solar Power Plant, will be constructed on the South Fork of the White River downstream from the Meadows Reservoir with its afterbay, South Fork Reservoir, formed by an earth-rockfill dam immediately below on the South Fork of the White River, downstream from its confluence with Lost Solar Creek. The South Fork will also serve as a balancing reservoir for the controlled release of water for downstream entitlements and consistent streamflow maintenance, and will have provisions for a pipeline outlet for delivery of water to the Piceance Basin for consumptive use for oil shale processing.

The hydraulic system of the project has been conceived and designed to permit the greatest possible flexibility of pumping and consequently of conservation of water, consistent with economic operation. It will be possible at Lost Solar Power Plant to pump water from earlier power generation and natural inflows from the South Fork Reservoir back to Meadows Reservoir for storage. Water from the Sweetwater drainage area can also be transferred back to Meadows by pumping at the Sweetwater power plant.

The initially installed peak capability at Lost Solar Power Plant will be 400,000 kilowatts with provisions for increasing this to 600,000 kilowatts.

Stage III also contemplates the installation of a third pair of reversible pump turbines at Sweetwater which will bring the peak capability of this power plant to 600,000 kilowatts. At both power plants provision will be made for the installation of further machines, as Petitioner's extensive studies of project future loads and load patterns for the region in relation to project resources indicate. The potential peaking capacity of the project could be of the order of 4,000,000 kilowatts.

Transmission Facilities:

Petitioner proposes to furnish only wholesale power and not to distribute power at retail. High voltage transmission facilities will be provided by East-West Intertie, Inc., a separate corporation to be licensed separately.

Market for Petitioner's Power:

Petitioner and Consumers Public Power District of Nebraska negotiated and executed a memorandum of intention (R. 2246-Ex. 100-04) to purchase Petitioner's power. Negotiations have continued to develop plans by which Petitioner's power resources would be made available to consumers in Nebraska and neighboring states. The current status of these negotiations was confirmed by letter to Respondent dated March 7, 1967 (R. 4898). Such negotiations have involved the development, exchange, comparison, and discussion of large amounts of data concerning the generation, transmission, and distribution of electrical energy, and interchange and coordination of such energy to be produced by Petitioner's facilities with those in existence and planned.

In addition to its proposal for a direct supply of power and energy to the Nebraska market, Petitioner has prepared

studies of benefits to other baseload power producers and distributors which would result from interconnection with the project's pumped storage facilities. These studies show that such interconnection will permit them to achieve greater economy in the operation of their large thermal generating sets by the inherent ability of Petitioner's project to provide reserve capacity at most economic cost, whether spinning reserve instantly available in an emergency, or obligatory reserve for standby. (R. 4933-5005.)

Interventions and Motions to Dismiss

Public Service Company first applied for permission to intervene on June 9, 1965 (R. 1540-1545) although it was informed of the pendency of Petitioner's application from the outset and was conversant with the project from its earliest stages as a result of direct negotiations with the applicant. Petitioner promptly filed its objections to this intervention (R. 1699).

This application to intervene was granted by Respondent on August 19, 1965 (R. 1774). The Public Service Company's motion to dismiss filed June 6, 1966, comprehensively sets forth its total absence of lawful interest in the subject matter of Project 2289.

Colorado River Water Conservation District filed its application to intervene out of time on November 22, 1965 (R. 1800-05) disclosing no lawful interest in Project 2289 and reciting only facts which are involved in a water rights adjudication proceeding now pending before the Courts of the State of Colorado.

Petitioner promptly filed its answer to this requested intervention on December 3, 1965. The right to intervene was granted to Colorado River Water Conservation District on February 1, 1966. On June 6, 1966, said intervenor joined in the motion of Public Service Company to dismiss application for Project 2289 (R. 4670).

Humble Oil and Refining Company filed its petition for right to intervene on June 10, 1965, reciting facts involved in a water rights adjudication proceeding then pending before the Courts of the State of Colorado and showing no lawful interest in Project 2289 (R. 1651-1660). Petitioner promptly filed its objection to such intervention (R. 1696). Humble Oil and Refining Company filed no motion to dismiss Project 2289.

STATUTES, REGULATIONS, RULES, AND REPORT INVOLVED

Federal Power Act

Section 3 (11), 16 U.S.C. § 796 (11).

The words defined in this section shall have the following meanings for purposes of this chapter, to wit:

* * *

"(11) 'project' means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit."

Section 4 (e), 16 U.S.C. § 797 (e).

The commission is authorized and empowered —

* * *

"(e) To issue licenses to citizens of the United States, or to any association of such citizens, or to

any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided * * * Provided further, That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting the navigation have been approved by the Chief of Engineers and the Secretary of the Army. Whenever the contemplated improvement is for the judgment of the commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the commission and shall become a part of the records of the commission: * * * And provided further, That upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (f) of this section, notice shall be given and published as required by the proviso of said subsection."

Section 10(a), 16 U.S.C. § 803 (a).

All licenses issued under sections 792, 793, 795-818, and 820-823 of this title shall be upon the following conditions:

"(a) That the project adopted, including the maps, plans, and specifications, shall be such as in the judg-

ment of the Commission will be best adopted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes; and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval."

* * *

"(h) Combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or fix, maintain, or increase prices for electrical energy or service are hereby prohibited."

16 U.S.C. § 824 (a)

Interconnection and coordination of facilities; emergencies; transmission to foreign countries - Regional districts; establishment; notice to State commissions

"(a) For the purpose of assuring an abundant supply of electricity throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modify-

ing the boundaries thereof the Commission shall give notice to the State Commission of each State situated wholly or in part within such district, and shall afford each such State Commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations."

Section 313 (b), 16 U.S.C. § 825/ (b)

"(b) Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the United States Court of Appeals for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of Title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the

proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of Title 28."

Sherman Anti-Trust Act

15 U.S.C. § 1-7 (pertinent excerpts);

"§ 1) Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, * * * is declared to be illegal * * *.

"§ 2) Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, * * * shall be deemed guilty of a misdemeanor.

"§ 7) The word 'person' or 'persons', wherever used in sections 1-7 of this title shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States the laws of the Territories, the laws of any State, * * *."

Administrative Procedure Act

5 U.S.C. § 1007 (b)

"(b) *Submittals and Decisions.*—Prior to each recommended, initial, or tentative decision, or decision

upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

Regulations Under Federal Power Act

Application for License for Proposed Major Project or Minor Part Thereof

§ 4.40. Contents.

Each application for license for a complete project of more than 2,000 horsepower installed capacity, to be constructed, or for a minor part of such project shall be verified, shall conform to § 131.2 of this chapter, and shall set forth in appropriate detail the following.

* * *

(i) The proposed use or market for the power to be developed, indicating whether applicant is a public utility or will become a public utility, and if so whether it is or will be subject to regulation by any State agency. In case the applicant can give no positive assurance that there is or will be a demand for the power upon completion of construction of the project, and that it will be used or distributed by the applicant or sold to others for use or distribution, a full and complete statement and explanation shall

be made of the applicant's expectations in this regard and of the basis therefor.

Rules of Practice and Procedure, § 1.8 Intervention

(b) *Who may petition.* A petition to intervene may be filed by any person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. Such right or interest may be:

(1) A right conferred by statute of the United States;

(2) An interest which may be directly affected and which is not adequately represented by existing parties and as to which petitioners may be bound by the Commission's action in the proceeding (the following may have such an interest: consumers served by the applicant, defendant, or respondent; holders of securities of the applicant, defendant, or respondent; and competitors of the applicant, defendant, or respondent).

(3) Any other interest of such nature that petitioner's participation may be in the public interest.

Miscellaneous Citation

National Power Survey: A report of the Federal Power Commission 1964.

STATEMENT OF POINTS

The Respondent erred as a matter of law in dismissing the Petitioner's application for licensing Project No. 2289.

SUMMARY OF ARGUMENT

1. The Commisison wrongfully granted the motion to dismiss the application for license for Project No. 2289 in the face of pending negotiations for the purchase of applicant's power and the request of the State of Nebraska Power Review Board to keep the proceedings open for further market evidence.

2. The Commission wrongfully dismissed the application for license for Project No. 2289 without undertaking its duties under the Federal Power Act to consider the proper utilization and conservation of the power resources required to assure an abundant supply of energy with the greatest possible economy in the area faced with a long-term power deficiency.

3. The Commission wrongfully granted the motion of intervenor Public Service Company of Colorado to dismiss the application in the absence of any showing of any lawful interest for itself or the public and without regard to the prohibitions of the anti-trust laws, particularly Title 15 U.S.C. §§ 1-7, and Title 16 U.S.C. § 803(h).

4. The Commission failed to require intervenor Colorado River Water Conservation District to produce evidence of its intention or capability to generage, transmit or otherwise deal in electric power, and to show the proposed project is in any wise contrary to the public interest.

5. The Respondent arbitrarily failed to rule on the merits of Humble Oil & Refining Company's petition to intervene or to require the production of evidence establishing rights or interests which would be affected by this proceeding or would affect adversely the public interest.

ARGUMENT

1. The Commission wrongfully granted the motion to dismiss the application for license for Project No. 2289 in the face of pending negotiations for the purchase of applicant's power and the request of the State of Nebraska Power Review Board to keep the proceedings open for further market evidence.

The Federal Power Commission, acting preemptorily, dismissed the application before all the evidence in support thereof was submitted. The Commission foreclosed any opportunity to consider other evidence and rejected the request of the only intervenor shown to have a genuine interest in seeing applicant's facilities developed for the benefit of prospective consumers to give the applicant an opportunity to present additional evidence and continue negotiations with Consumers Public Power District and other Nebraska suppliers.

The statutory duty of the Commission to give full consideration to the merits of the project in the light of indicated urgent demand for additional supplies of power for users in Nebraska is clear. Commissioner Ross, dissenting to the opinion issued February 16, 1967, effectively summarizes this duty as follows:

"As a legal matter, this Commission has been entrusted with the duty of representing the public in these kinds of cases. In quoting Section 10(a) of the Act in *Scenic Hudson* [*Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 F.2d 608 (1965), cert. denied, 384 U.S. 941 (1966)], the court declared: 'Congress gave the Federal Power Commission sweeping authority and a specific planning responsibility.' (354 F.2d 608, p. 613; see also p. 620-21.) 'If the Commission is properly to discharge its duty in this regard, the record on which it bases its determination must be complete. The petitioners and the public at large have a right to

demand this completeness.' (*Scenic Hudson, supra*, p. 612; see also p. 621.)" (R. 4894.)

The Commission granted the intervention of the Nebraska Power Review Board but virtually ignored the stated purpose of such intervention and indulged in erroneous assumptions of fact (Footnote No. 1, pages 4 and 5 of February 16, 1967, opinion. R. 4, p. 4888-4889) and proceeded to eliminate the applicant's project as a possible source to supply power for the Nebraska market on the basis of such assumptions. It was pointed out in the application for reconsideration of the dismissal order, at Sections 8 and 9:

"Said order and opinion assumes (in the footnote on pages 4 and 5) (a) that a 'coal fired steam-electric generating station at Grand Island is feasible or its product competitive with power to be supplied by this applicant; (b) that Applicant seeks to serve Omaha; (c) that a nuclear power plant on the Missouri River, now proposed by Consumers Public Power District, is a substitute or competitive alternate to a supply of power from Project No. 2289; (d) that the Bureau of Power has any uncommitted power to sell or deliver in Nebraska; (e) that various transmission lines can or will be built to avoid need for Applicant's power by Nebraska consumers. All of these assumptions are erroneous in fact; have no foundation in the records of this proceeding and the consideration thereof is unlawfully prejudicial to the rights of Applicant and constitutes an attempt by the Commission to eliminate a bona-fide and proper competition for the Nebraska electric power market and to unlawfully discriminate between competing potential power suppliers.

"9. That said opinion and order ignore completely the information supplied by the Nebraska Power Review Board and Consumers Public Power District, which stands as uncontroverted evidence before the Commission, showing that the State of Nebraska is an area of deficient power supplies, has suffered blackouts to the detriment of its citizens and is confronted with the possibility of further and

more grievous blackouts unless the supply of power such as that offered by this petitioner becomes available to it in the near future." (R. 4922-4923.)

2. The Commission wrongfully dismissed the application for license for Project No. 2289 without undertaking its duties under the Federal Power Act to consider the proper utilization and conservation of the power resources required to assure an abundant supply of energy with the greatest possible economy in the area faced with a long-term power deficiency.

The license application which was dismissed by the Respondent on February 16, 1967 (R. 4883), is one which has been developed at great cost to the applicant. It is a highly sophisticated engineering proposal involving the utilization of the pumped-storage electric generation concept, a relatively new concept in the United States. The engineering talent which has contributed to the formulation of the application includes the leading engineers of this country (R. 1875, 1989, 1908, and 1913). Substantial contributions have also been made by British engineers familiar with pumped-storage and high voltage transmission (R. 1924).

Concurrently with the Petitioner's efforts to further develop and improve the utilization of these particular hydroelectric resources, the Federal Power Commission had developed and issued in October 1964, its National Power Survey, dramatically identifying present and future areas in which the demand for electric energy would substantially increase and for which there existed no readily identified source of power. One of these areas was the State of Nebraska and its neighboring states which are for the most part without hydroelectric resources and are also dependent in a large measure upon out-of-state sources for coal or gas with which to generate electric power. The National Power Survey also tentatively proposed a series of interconnecting transmission lines designed ultimately to form a national

grid. This material was carefully studied by the Petitioner's engineers and its application adapted thereto. Incidental recreational features were discussed with the Forest Service of the Department of Agriculture and an initial Memorandum of Understanding with respect to the lake to be enlarged on Sweetwater Creek was entered into on February 13, 1962.

Data supporting the application was ordered to be circulated to the federal agencies, pursuant to the Federal Power Commission's rules and regulations on May 29, 1961 (R. 214-217), and May 11, 1965 (R. 1353). The applicant, at Respondent's order, submitted copies of its amended application to Intervenor, whose requests for permission to intervene were filed on June 9 and 10 and November 22, 1965, respectively. (R. 1540, 1546, 1553, 1651, and 1800.)

Thus, the contention of all the Intervenor in their motions to dismiss, to the effect that Petitioner's application had been pending an unduly long period of time, are without substance or merit. But even if cognizance is to be taken of the fact that the preliminary application was filed in 1961, cognizance must also be taken of the fact that from 1961 to the date of dismissal, Petitioner had increased the capacity, extended and vastly improved the quality and engineering feasibility of its project, by the expenditure of large sums of money and with great diligence and skill.

There is no evidence or offer to prove that the Public Service Company, the Colorado River Water Conservation District, any other of the Intervenor, or the public will be in any wise detrimentally or adversely affected should the Petitioner be successful in concluding a contract for the sale of power to Nebraska distributors and users.

There is no evidence or offer to prove before the Respondent that the Respondent itself will be in any wise adversely affected or inconvenienced by continuing the pendency of this application.

No evidence or offer of evidence questioning the engineering feasibility of the project has been made, and respon-

sible representatives of an area of great need to which this power can be transmitted efficiently have both formally and informally indicated to the Respondent their interest in continuing negotiations.

The dismissal of Petitioner's application, even though "without prejudice," is grossly unreasonable, contrary to the public interest, preemptory and precipitious, and in direct violation of the duties and responsibilities of the Commission. The Respondent should be ordered and directed to reinstate Petitioner's application and not to dismiss the same until there has been submitted to Respondent sufficient evidence that no market can be found by Applicant for this power.

The unreasonable and unduly restrictive nature of the Respondent's opinion supporting the dismissal order is pointed out in Commissioner Ross's dissent issued May 15, 1967, relating to the order confirming dismissal of the application. Such dissent points to the requirements of Regulation 4.40(i) under the Federal Power Act, which prescribed that applicant shall state its expectations for use and distribution of the power to be produced, in the absence of "positive assurance that there is or will be a demand for the power upon completion of the construction of the project," and properly asks the question based on the pending record of potential needs and supplies of power in Nebraska—"What more does the majority need to allow the case to proceed?" (R. 5011.)

The record before the Commission made subsequent to January 3, 1961, establishes that the applicant has worked diligently in good faith and has expended large sums of money to improve the design and increase the capability and productive capacity of this project and has kept the Commission fully advised from time to time of the progress and results of its efforts. Such showing is totally ignored by the Commission in its opinion, other than by the footnote of dissenting Commissioner Ross, wherein he states:

"Significantly, this applicant has nevertheless expended considerable sums of money, approximately \$1,500,000, and has adduced substantial evidence of a technical and economic nature in support of its application."

By its summary dismissal and rush to judgment, the Commission brushed aside without any show of interest or action on its own part to comply with its statutory duty, used a restricted interpretation of its responsibilities and acted upon an incomplete record.

In dismissing the application for a license before all the evidence was submitted, Respondent has precluded any evaluation of the proposed project on its merits. It is the Commission's duty under the Federal Power Act, Sections 10(a), 16 U.S.C. § 803(a), and 202(a), 16 U.S.C. § 824(a), to consider the conservation and proper use of natural resources to assure an abundant supply of energy with the greatest possible economy.

The Commission is required to permit the submission of evidence or make inquiry on its own initiative as to whether the proposed project will operate economically as a power project and to develop the facts as to the cost of alternative sources of power to permit the public and prospective consumers to make an informed judgment on the service proposed.

The Commission's statutory duty is well summarized in Commissioner Ross's dissenting opinion, as follows:

"The Commission's responsibilities under Section 10(a) are closely related to its duties under Section 202(a). Under these sections, the Commission is obliged to consider the proper utilization and conservation of natural resources for the purpose of assuring an abundant supply of energy with the greatest possible economy, and to promote the voluntary interconnection and coordination of facilities for the generation, transmission and sale of energy." (R. 4894.)

The refusal of the Commission to keep the application open for an opportunity to present additional evidence relating to the potential market in Nebraska or elsewhere flies squarely in the face of Section 10(a) of the Federal Power Act. In *First Iowa Hydro-Electric Cooperative v. Federal Power Commission*, 328 U.S. 152 (1946), the U. S. Supreme Court noted:

"It [the Power Act] was an outgrowth of a widely supported effort of the conservationists to secure enactment of a complete scheme of national regulation which would promote the comprehensive development of the water resources of the Nation, in so far as it was within the reach of the federal power to do so, instead of the piecemeal, restrictive, negative approach of the River and Harbor Acts. . .

"It was a major undertaking involving a major change of national policy. That it was thei

"it was a major undertaking involving a major change of national policy. That it was the intention of Congress to secure a comprehensive development of national resources and not merely to prevent obstruction to navigation is apparent from the provisions of the Act. . ." (328 U.S. at 180-81).

In *Scenic Hudson Preservation Conference v. Federal Power Commission, supra*, the court cited *First Iowa Hydro-Electric Cooperative v. FPC, supra*, and found, "it is the duty of the Federal Power Commission properly to weigh each factor" in passing upon licenses sought under Section 10(a) of the Federal Power Act. In deciding whether the Commission has correctly discharged its duties, the court found that the Commission has an affirmative duty, under Section 10(a), to inquire into and consider all relevant facts (p. 620).

The language of the act requires the Commission to consider comprehensively the development of water power for use or benefit in interstate commerce with full attention paid to possible future projects and the overall effect thereof. Using a curious dichotomy, the Commission dismisses ap-

plicant's pending negotiations and submission of plans for operating in combination with other power-producing facilities to serve all of the power uses in the deficient areas of Nebraska and neighboring states with an assertion, "* * * all of these plans are still in the proposal stage and Applicant has put forward no tangible evidence which would allow us to reasonably conclude that, based on its present efforts, a market exists or will exist for project power," in the same paragraph which recognizes that Nebraska and neighboring states are "deficient areas" the solution of whose needs are under consideration by the very negotiations proposed to be followed up for presentation to the Commission. (R. 5009)

The regional integration, and coordination of facilities, the resulting economies, and the utilization and conservation of natural resources thus achieved are precisely what were sought to be encouraged and fostered by the Federal Power Act and established as a part of the criterion of the public interest to be served by regulation thereunder.

The recent decision by the U. S. Supreme Court in *Udall v. Federal Power Commission*, ___ U.S. ___, 18 L. Ed. 2d 869, 87 S. Ct. ___, decided June 5, 1967, ordered the case remanded, stating, in pertinent part:

"The test is whether the [hydroelectric power] project will be in the public interest. And that determination can be made only after an exploration of all issues relevant to the 'public interest', including future power demand and supply, alternative sources of power, * * *." (p. 883.)

An administrative agency has a responsibility to consider, on its own initiative, alternatives to what the private parties present when consideration of such alternatives appear, *prima facie*, to be required by the public interest. *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204 (1960), cert. denied, 364 U.S. 913 (1960).

3. The Commission wrongfully granted the motion of intervenor Public Service Company of Colorado to dismiss the application without regard to the prohibitions of the anti-trust laws, particularly Title 15 U.S.C. §§ 1-7, and Title 16 U.S.C. § 803(h).

In seeking to intervene, Public Service Company of Colorado's petition showed its interest to be that of serving customers within the state of Colorado where it holds a regulated monopoly. In the same petition, it declared its intention to install facilities to serve "the general market area proposed to be served by Rocky Mountain Power Company" and "to provide adequately for all present and realistically future power requirements of such area," thereby declaring its interest in any interstate service to customers wherever the power which would be developed by this project might be directed. It was incumbent upon the Commission to consider the legal effect of the conflicting positions taken by the intervenor and to measure its actions in seeking to prohibit the creation of applicant's project and to prevent any production of power in Colorado for transmission interstate to consumers elsewhere, unless such power is produced by the facilities of the intervenor. The Commission's order fails to deal with this attempt to restrain commerce.

The actions of Public Service Company of Colorado and others in opposing the application of Rocky Mountain Power Company for a license to generate electric energy in Colorado and transport it in interstate commerce to markets in another state or states and moving to dismiss such application, all for the purpose of monopolizing such market, constitutes a violation of the provisions of the Sherman Anti-Trust Act and the Federal Power Act as more particularly specified hereinafter.

The Sherman Act is not limited to restraints whose effects cover the entire United States; where the relevant competitive market covers only a small area, the Act may be invoked to prevent unreasonable restraints within that area. *United States v. Columbia Steel Co.*, 334 U.S. 862

(1948); *United States v. Griffith*, 334 U.S. 100 (1948). Here the immediate relevant market was a part of Nebraska. It is this market which Public Service Company of Colorado admittedly seeks to reserve for its own use. The intention to serve this market is expressed in the Petition to Intervene filed by the Public Service Company of Colorado before the Federal Power Commission. Paragraph 4 of that petition stated that Public Service Company of Colorado "will provide adequately for all present and realistically projected future power requirements" of the "general market area proposed to be served by Rocky Mountain Power Co." Public Service Company of Colorado further states in paragraph 5 of the same petition that its "traditional market for its power, present and planned, may be jeopardized***." (R. 1540-42.) Rocky Mountain Power Company has never claimed that it intends to serve consumers in Colorado. The only market it has proposed to serve is Nebraska or states other than Colorado. It is this market which Public Service Company of Colorado, by its act of intervention in the proceedings before the Federal Power Commission, and motion to intervene in the review proceedings, has sought to foreclose to the use of Rocky Mountain Power Company or others. This market would certainly be considered to be a "substantial" market. In *United States v. Griffith, supra*, at page 107, the Court said, "It is indeed 'unreasonable,' per se, to foreclose competitors from any substantial market. The anti-trust laws are as much violated by the prevention of competition as by its destruction." Most certainly the action of Public Service Company of Colorado can only be construed as an attempt to prevent competition in any area they deem to be an exclusive market to be served only by its monopoly.

4. The Commission failed to require intervenor Colorado River Water Conservation District to produce evidence of its intention or capability to generate, transmit or otherwise deal in electric power, and to show the proposed project is in any wise contrary to the public interest.

The legal right of Colorado River Water Conservation District to intervene and to intervene out of time was challenged by Petitioner on the grounds that no showing was made to meet the requirements under the Federal Power Act and the regulations thereunder for such intervention. In particular, it was urged that the District "(a) asserts no right conferred by a Statute of the United States; (b) is not a consumer served by Applicant Rocky Mountain Power Company; (c) holds no securities of Applicant; (d) is not a competitor of Applicant in the sale of electricity or natural gas; and states no facts from which Commission may properly conclude that its participation as an intervenor may be in the public interest or that intervention by it is necessary or appropriate to the administration of the Statute under which this proceeding is brought as required by Section 1.8 of the Rules of Practice and Procedure". Petitioner further challenged the District's assertion of good faith and the absence of corporate power to engage in the business of developing, transmitting, utilizing or distributing electric power. (R. 1806-1815.)

The Commission arbitrarily failed to rule upon the merits of the issues raised by Petitioner and without requiring evidence or hearing granted the District status as an intervenor and entertained and granted its jointure in the motion to dismiss the application. The Commission acted in violation of Section 8(b) of the Administrative Procedure Act, 5 U.S.C. § 1007(b), which provides in part, "All decisions * * * shall * * * include a statement of the findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record * * *." The Commission did not do its duty in

merely deciding upon the District's unsupported intervention petition. The record is incomplete. The Commission owes the duty to investigate all the pertinent facts and see that they are adduced when the parties have not put them in. It can act only on the record made and where, as here, that is not sufficient, it should see the record supplemented before it acts. It must preserve the elements of fair play, but it is not fair play for it to create an injustice instead of remedying one, by omitting to inform itself and by acting ignorantly when intelligent action is possible. *Freight Forwarders Institute v. United States*, 263 F. Supp. 460 (1967); *Isbrandtsen Co. v. United States*, 96 F. Supp. 883, 892 (S.D. N.Y. 1951), affirmed by equally divided court, 342 U.S. 950 (1952).

5. The Respondent arbitrarily failed to rule on the merits of Humble Oil & Refining Company's petition to intervene or to require the production of evidence establishing rights or interests which would be affected by this proceeding or would affect adversely the public interest.

Humble Oil & Refining Company was granted the status of intervenor over the objection of Petitioner on the grounds that there was no showing of any pending matter which could be determined by the Commission; that no facts were stated which would permit the Commission to conclude that intervention of Humble Oil & Refining Company was in the public interest and that there was no statement of facts or evidence adduced from which the nature of Humble's alleged right or interest could be determined nor any grounds by which the proposed intervention advised the Commission or the parties of facts which Humble intended to controvert or questions of law which it intended to put in issue.

Humble Oil & Refining Company did not join the motion before the Commission to dismiss the application and is permitted to intervene here over Petitioner's objection. The same objections to the Commission's failure to require a

showing in support of such petition that are asserted in Point 4 above with regard to Colorado River Water Conservation District are applicable to this intervenor under the provisions of Section 8(b) of the Administrative Procedure Act, 5 U.S.C. § 1007(b), and the findings of the court in *Freight Forwarders Institute v. United States, supra*, and are incorporated herein by reference.

CONCLUSION

For the foregoing reasons Petitioner submits that the order dismissing the application for license should be set aside and the case remanded for further proceedings, as more specifically requested in the Petition for Review, with direction that the Respondent specifically rule upon the merits of the petitions to intervene filed by the Colorado Public Service Company, the Colorado River Water Conservation District, and the Humble Oil & Refining Company and determine the extent, if any, to which the substantive rights of such intervenors or the public interest would be adversely affected by proceeding with the application for licensing Project No. 2289.

Respectfully submitted,

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Dated: October 23, 1967

BRIEF FOR INTERVENORS

IN THE United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,138

ROCKY MOUNTAIN POWER COMPANY, *Petitioner,*

v.

FEDERAL POWER COMMISSION, *Respondent,*
PUBLIC SERVICE COMPANY OF COLORADO, *et al., Intervenors.*

On Petition for Review of an Order of the
Federal Power Commission

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QUESTION PRESENTED

In the opinion of the intervenors the question presented is:

Whether the Federal Power Commission erred in dismissing, without prejudice, an application for a federal water power license where the application, defective on its face with regard to evidence of a market for the power proposed to be produced and of an ability to finance the project, remained unperfected despite repeated requests by the Commission for this information, over a five-year period (1961-1965), and in defiance of a 1965 Commission order directing the submission of such data, failing which the application would be subject to dismissal.

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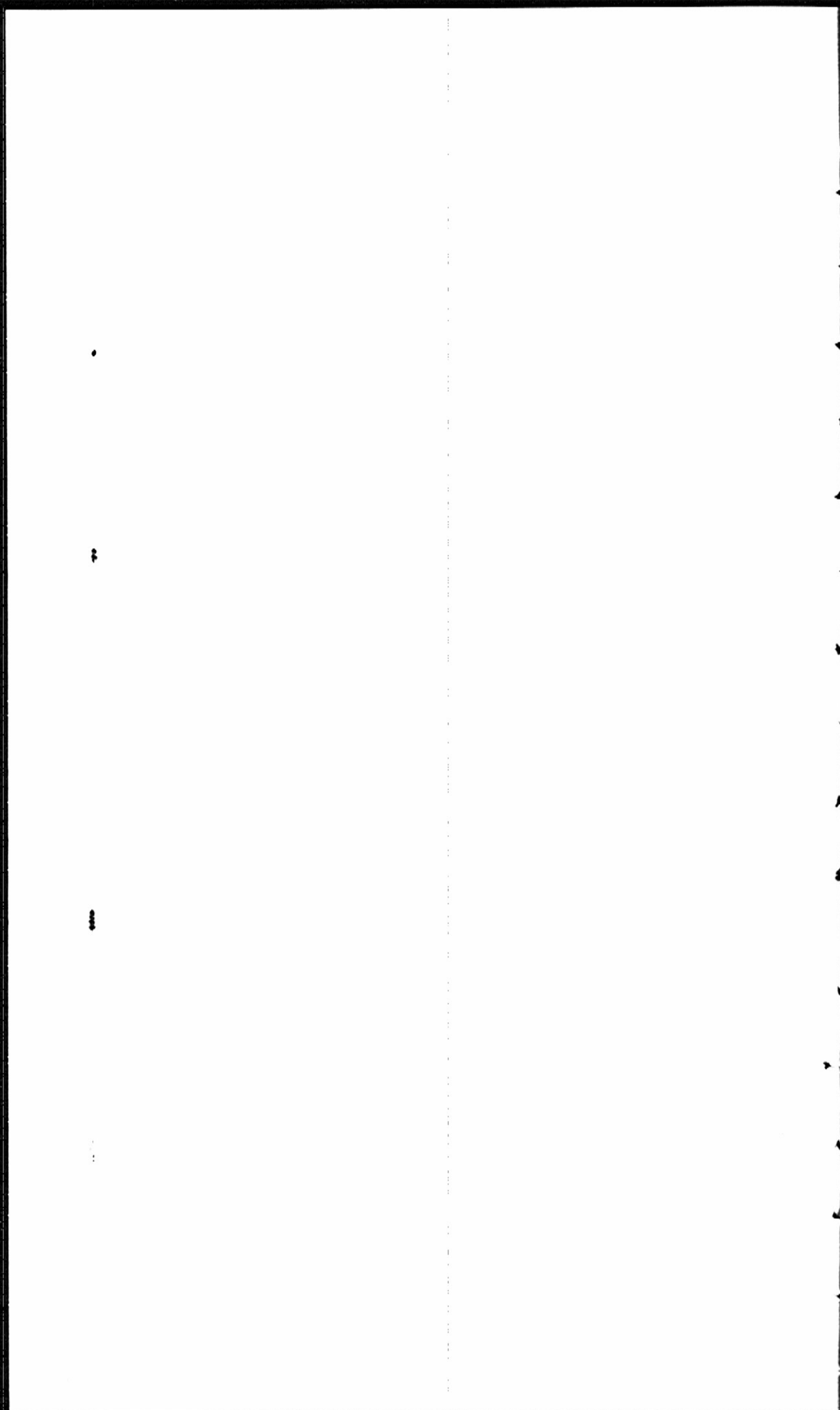
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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,138

ROCKY MOUNTAIN POWER COMPANY, *Petitioner,*

v.

FEDERAL POWER COMMISSION, *Respondent,*

PUBLIC SERVICE COMPANY OF COLORADO;

COLORADO RIVER WATER CONSERVATION DISTRICT;

HUMBLE OIL & REFINING COMPANY; AND

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,
Intervenors.

On Petition for Review of an Order of the
Federal Power Commission

BRIEF FOR INTERVENORS

COUNTERSTATEMENT OF THE CASE

Introductory Statement

Pursuant to the order of the Court entered on October 4, 1967, the intervenors file herewith a single consolidated brief. Two of the intervenors are public agencies of the State of Colorado—the Public Utilities Commission of the State, and the Colorado River Water Conservation Dis-

strict; the other two are corporate entities—Humble Oil & Refining Company, and Public Service Company of Colorado.¹ All of the intervenors have widely varying interests and responsibilities, one from the other. Nevertheless, all had filed or joined in motions to dismiss part or all of the license application, and all join in this consolidated brief in support of the orders of the Federal Power Commission dismissing the application. The intervenors see the only question here to be whether an applicant before the Commission can repeatedly flaunt reasonable, and lawful instructions and directives of the Commission with impunity. In this connection, we view petitioner's "Statement of the Case" to be highly incomplete. Hence we will supplement it by what we deem to be the salient facts omitted there.

Proceedings Below

History of the Proceedings, January 5, 1961—December 31, 1964. On January 5, 1961, almost 7 years ago, petitioner filed an application for a license for a hydro-electric project to be located in Colorado on the western side of the Continental Divide, on certain tributaries of the Colorado River, including Sweetwater Creek (R. 108). This application proposed two conventional power plants, known as Sweetwater and Dotsero, having a total installed capacity of 150,000 kilowatts. On February 2, 1961, the Commission wrote to petitioner to advise that no showing of the existence of a market for the power or of petitioner's ability to finance the project had been made and requested this and other information (R. 171). The failure to make any showing on market and financing was again brought to petitioner's attention by a Commission letter March 17, 1961 (R. 174), following which public notice of the application was issued (R. 217).

A year later, on March 30, 1962, the Commission again wrote to petitioner calling attention to the lack of showing

¹ References made hereinafter to these entities may be shortened to Colorado PUC, District, Humble, and Public Service Company, respectively.

on market and financing (R. 336). Petitioner responded on May 4, 1962, with a brief filing to supplement the application which proposed a substantially different alternative project—a mixed conventional and pumped storage project with an initial installed capacity of 165,000 kilowatts and an ultimate installed capacity of 705,000 kilowatts. The Commission replied on May 31, 1962 (R. 342 A, 342 B), asking the petitioner to file its new proposal as a formal amendment of its application with fully developed accompanying exhibits. This Commission letter also pointed out the need for satisfactory evidence showing a market and financial feasibility. On February 7, 1963, petitioner submitted certain data by way of amendment which drew a Commission response dated March 20, 1963 (R. 368), again asking for information concerning the market for the power and project financing.

The amendment requested by the Commission on May 31, 1962, was finally filed by petitioner under date of March 22, 1963. This filing proposed the project for construction in three stages with the Sweetwater plant to have a first stage capacity of 165,000 kilowatts, a second stage capacity of 330,000 kilowatts, and a third stage capacity of 495,000 kilowatts coupled with a Dotsero installation of 210,000 kilowatts, for a combined ultimate development of 705,000 kilowatts. There was thus pending an application proposing close to five times the installed capacity of the project as originally proposed two and one-half years earlier, still, however, without any showing of market or financing. On June 20, 1963, petitioner wired for an extension of time to supply this data (R. 998), which was granted (R. 999).

When the information was not forthcoming, the Commission reminded the petitioner of these deficiencies in a letter dated July 29, 1963 (R. 1000). Because the extensive amending of the original application had caused uncertainty as to the details of the proposals as of that point, this

Commission letter requested the petitioner to assemble all of the material submitted into a unified and revised application. On August 24, 1963, petitioner again requested an extension of time (R. 1001). This was also granted (R. 1006), and on December 23, 1963, petitioner submitted a partial amended application.

Letters from the Commission on March 19, 1964 (R. 1136), and June 23, 1964 (R. 1141), again made it clear that market and financing data had not been submitted. In response to these inquiries petitioner on October 22, 1964, requested a conference (R. 1143). This was granted (R. 1144), following which petitioner wrote on November 13, 1964, of the steps in progress in support of its application (R. 1145). Then, on November 30, 1964, petitioner submitted an amended application covering Stages I and II of its proposal, followed on December 31, 1964, with an amendment covering a proposed Stage III.

At this point the proposal for Stages I and II included the Sweetwater plant (but not the Dotsero plant) to contain an initial installed capacity of 165,000 kilowatts, to be expanded in Stage II to 330,000 kilowatts. Pumped storage at this installation would be supported by a proposed coal fired steam plant at Oak Creek, some 42 miles to the north, with an ultimate capacity of 1,500,000 kilowatts, to be operated by a paper subsidiary of petitioner known as the Oak Creek Power Company. In Stage III, Sweetwater's installed capacity would be increased to 495,000 kilowatts. Also in Stage III, Meadows Reservoir would be built in the adjacent basin of the South Fork of White River, as would the Lost Solar pumped storage facility in the Flat Tops Primitive Area downstream, with an ultimate installed capacity of 495,000 kilowatts. Taking all three stages together the proposal, as it stood in December 1964, called for an installed capacity in steam and hydro of approximately 2,400,000 kilowatts in contrast to the 150,000 kilowatts of capacity proposed in January 1961. The power

and energy to be produced would be transmitted to the Nebraska area by another paper subsidiary organization known as East-West Intertie, Inc., which would build the transmission lines. Despite these physical and organizational changes, items which remained unchanged over the four-year period were the lack of any showings of a market or of ability to finance a project which, for certain of the Stages I and II facilities alone, had an estimated cost of \$163,000,000 (R. 15), without provision for transmission of the power to a market. The Commission, in issuing public notice of the amended application on May 11, 1965, also wrote to the petitioner on the same day requesting that these showings be made (R. 1355).

Proceedings surrounding Commission's Order of August 19, 1965. After public notice of the amended application had been given in May of 1965, the Commission received numerous informal protests regarding the possible effect of the project on the Flat Tops Primitive Area, and several petitions to intervene were filed (R. 1362-1506, 1511-1695, 1726-1773). The Commission also received a letter of June 10, 1965, from the petitioner requesting nine months time in which to furnish contracts for the sale of power and other evidence of ability to finance the project and to market the power (R. 1614). The Commission acted on these several filings in two orders issued on August 19, 1965, one permitting interventions (R. 1774)² and the other prescribing procedure to be followed by the parties in the conduct

² This order granted intervention to Public Service Company of Colorado, Western Colorado Power Company, Utah Power and Light Company and Humble Oil & Refining Company. A notice of intervention had previously been filed as a matter of right by the Public Utilities Commission of Colorado (R. 222-23; see FPC Rules of Practice, § 1.8(a)(1)). By order issued February 1, 1966, the Colorado Wildlife Federation, Inc. and the Colorado River Water Conservation District were permitted to intervene (R. 1823, 1824). The State of Colorado Game, Fish and Parks Commission was permitted to intervene by Commission order on April 11, 1966 (R. 3367). A Nebraska Power Review Board filing in intervention in November 1966, was granted by the Commission in February 1967 (R. 4883-4891).

of the proceeding preparatory to a hearing in May of 1966 (R. 1775-77). This latter order, after summarizing various documents filed since January 1961, noted (R. 1776):

... However, the application is still deficient as to information regarding the financing of the project, and as to information on availability of markets for electric power, and the Applicant has been requested to remedy these deficiencies. ...

Then, in setting forth a schedule apparently calculated to assure the petitioner the nine months requested in petitioner's letter of June 10, 1965 (*supra*, p. 5), the Commission ordered as follows:

1. The Applicant shall file by March 1, 1966, with the Secretary of the Commission an original and ten copies of all testimony, including qualifications of the witnesses, and exhibits to be presented in Applicant's direct case.
2. The Applicant's filing shall include a full and complete statement of a definite plan for the financing of the project, and a full and complete statement of definite plans for the marketing of the electric power to be produced by the project. Failure to comply with this directive will constitute a basis for a motion to dismiss the application for a license for lack of completeness.³

On March 1, 1966, petitioner submitted its testimony and exhibits. This submission drew a comprehensive motion to strike from FPC Staff counsel (R. 3343-48), because large portions of the material contravened the August 19, 1965, order of the Commission requiring all testimony

³ See Order, R. 1776. Succeeding paragraphs of this order set April 29, 1966, for the filing of testimony and exhibits by other parties, including the FPC staff (par. 3); May 9 for motions to strike (par. 4); required all testimony, except exhibits, to be in question and answer form (par. 5); prohibited narrative material in exhibits, except for brief explanatory notes (par. 6); etc. Commissioner Ross was noted as dissenting, without opinion (R. 1777).

to be in question and answer form and all exhibits to be free of narrative material (R. 1775-77. See fn. 3, herein). Staff counsel pointed out that these requirements were to avoid the necessity of extensive cross-examination which would extend a hearing unnecessarily. Staff noted that his motion was being made well in advance of the May 9 date set by the Commission in its August 19, 1945, order for motions to strike:

... in order to afford Applicant an opportunity to resubmit the stricken material in conformance with the Commission's order without delaying the hearing and to avoid the resulting confusion if a motion of this nature were to be made for the first time on May 9, 1966, when all motions to strike are to be filed. (R. 3348).

The District, Humble and Public Service Company filed in support of Staff counsel's motion to strike (R. 3349-50, 3361-62, 3363-64), whereupon the Presiding Examiner, on March 30, 1966, ordered a prehearing conference for April 12 to hear opening statements, argument on Staff counsel's motion to strike, and to attend to certain procedural details (R. 3365).

While making an opening statement at the April 12 hearing, in response to questions by the Examiner, petitioner conceded that the deficiencies with regard to market and financing (which the Commission's order of August 19, 1965, had stipulated be remedied subject to motion to dismiss) still existed (R. 17-20). Counsel for Utah Power and Light Company and Western Colorado Power Company then gave notice of intention to file a motion to dismiss the application (R. 29); and counsel for Humble indicated that "... there can be no reasonable question but what the applicant has a total failure of proof on the material thus far filed in at least two areas, one financing and the other marketing." (R. 31). Staff counsel also

noted that in the light of the Commission's order of August 19, 1965, pointing out deficiencies:

... silence on the part of Staff might be construed that Staff for its purposes has regarded the applicant's submission as adequate. This is not the case. The Staff regards the evidence on financing as still deficient, and has grave doubts as to the sufficiency of the evidence with regard to market. (R. 38-39).

Staff counsel made it clear that these considerations were in mind in connection with his motion to strike, which if granted would give petitioner until May 23 to resubmit its case in proper content as well as in proper form (R. 39, 47-48).

Petitioner responded that the matter was not of great concern—that it was willing to do whatever might expedite or clarify the record (R.60); that this might require an additional 80 pages for two witnesses, which had already been prepared in rough form (R. 62), but that seemed to be all. The Examiner, nevertheless, denied Staff's motion to strike (R. 62). Staff thereupon noted that this denial would be appealed to the Commission.

Difficulty also developed at this hearing in connection with whether the petitioner was really seeking a license in this proceeding for Stage III. The Examiner thought from statements made by petitioner that Stage III had been abandoned (R. 65-66). Both petitioner and Staff disputed this, however, for different reasons. Counsel for Humble then moved that the application as it related to Stage III be stricken (R. 69-70). While the Examiner denied this for the reason that it would be a final disposition of a portion of the case—an action he was not empowered to take under FPC's rules until the filing of an initial decision (Rules, § 1.12(e))—he stated that he would entertain a similar motion made in writing on or before May 2 as well as a request that such motion be referred to the Commission (R. 90, 97). The Examiner added that petitioner would be

required to respond to any such motion by May 12, 1966 (R. 97).

Following the adjournment of this hearing the Commission, upon motion made by Staff counsel (R. 3372-75), vacated the Examiner's ruling and granted Staff's motion to strike.⁴ This order gave petitioner until May 23, 1966, to resubmit its direct case and thus forestalled any action on motions dated April 22, 1966, to dismiss the entire application, which had been filed by Utah Power & Light Company and Western Colorado Power Company (R. 3400-07); as well as on Humble's motion to dismiss Stage III of the application, dated April 25, 1966 (R. 3419-32). As noted above, both motions had been discussed before the Examiner at the April 12 hearing (R. 29, 30, 97).

The Motions to Dismiss. When petitioner resubmitted its testimony on May 23, 1966, there were thus motions to dismiss already pending. Public Service Company added to these through filing a motion to dismiss dated June 3, 1966, which also requested that the motion be certified to the Commission for disposition (R. 4657-69). The Western Colorado and Utah power companies renewed their previous motion to dismiss and also joined in Public Service Company's motion to dismiss (R. 4683-84); and joinders in Public Service Company's motion were also filed by the District (R. 4670), the State Game, Fish and Parks Commission (R. 4674); the Colorado Wildlife Federation, Inc. (R. 4686), the FPC Staff (R. 4690-91), and the State Public Utilities Commission (R. 4693-94). These filings also asked that the date then set for the filing of evidence by these parties (June 13, 1967) be put over to June 27, 1967, to permit action on the pending motions.

⁴ R. 3474-75. Humble (R. 3391), the Colorado Wildlife Federation, Inc. (R. 3408), the Colorado Game, Fish and Parks Commission (R. 3409), and the District (R. 3394-97) joined in this motion. Petitioner, while urging Commission affirmance of the Examiner's ruling, nevertheless indicated that it was prepared and willing to proceed with a resubmission (R. 3474).

While these several filings were being made, the Examiner issued an order dated June 7, 1966, concerning Public Service Company's motion to dismiss, which order provided in pertinent part as follows (R. 4673):

Because the Commission on August 19, 1965, described the application as deficient and because a serious question may exist as to whether the deficiencies have since been remedied, it may be appropriate to refer the motion to dismiss to the Commission. In such event no purpose would be served by requiring the Intervenor or the Staff to serve their evidence by June 13th. The extension to June 27th is granted.

It is ordered that the applicant in its answer to the motion to dismiss shall list those portions of its evidence on which it relies to show adequate markets, and shall separately list those portions of its evidence on which it relies to show adequate financing. The two lists shall specify the page numbers of the evidence relied on, and, where practicable, line numbers. Each list shall also show which pieces of evidence thereon were submitted subsequent to August 19, 1965, and the dates of their submission.

The answer, as above directed, was received on June 17, and on June 21, 1967, the Examiner issued a notice advising that he had referred the matter to the Commission (R. 4741). The Commission notified all parties under date of June 24, 1966, that the Examiner's certification of the motion to dismiss had been received and also advised that the proceedings would be stayed pending further order of the Commission (R. 4842).

The Commission's Rulings. On February 16, 1967, the Commission by 4 to 1 vote issued its opinion and order dismissing the application without prejudice (R. 4885-97). This order took specific note of a Notice of Intervention filed well out of time (on November 24, 1966) by the Nebraska Power Review Board, which:

... did not request that the hearing be reopened so that it might submit evidence, nor did it request

that the course of the proceedings be altered in any manner because of its intervention. It asked only that it be allowed "to participate fully in any further proceedings." (R. 4886.)

In granting this intervention the Commission made it clear that it was well aware of the power situation in Nebraska, and included such considerations in its review of the entire market question. On this score the Commission concluded:

. . . However, despite repeated requests, there has been no showing of a market for this power in Nebraska or elsewhere. We believe it would serve no purpose to prolong this proceeding further. Should a market eventually be found for the power the applicant proposes to make available, no action which we are taking today would prevent the filing of a new application supported by new evidence. (R. 4888-89.)

The Commission then turned to the matter of financing. It noted that petitioner's witness on financing said that financing of the project would be conditional upon firm long term power contracts being secured with financially qualified purchasers; that these firm contracts were required, even assuming a tax exempt bond issue by a non-profit organization, in order to finance the project. As the Commission had already noted in its market search: "There are no such contracts." (R. 4890.)

The Commission had made passing reference to its repeated requests for this data and to its August 19, 1965, order requiring it; consequently, upon finding that the submission by petitioner was still deficient, the motion to dismiss was granted.

On rehearing, the Commission considered a motion for reconsideration by the Nebraska Power Review Board and an application for reconsideration by the petitioner. Both in effect requested that the record be held open for an additional indefinite period for the production of evidence on marketing and financing, with the petitioner alleging

that it was even then diligently pursuing contract negotiations in Nebraska and had presented proposals and plans to the Missouri Basin Systems Group. The Commission observed (R. 5009, 5010):

Applicant has had more than five years to collect and full opportunity at hearing to present, evidence of financial feasibility and marketability and has still failed to make the proper showing. . . .

* * *

We again emphasize that our action in dismissing this application is without prejudice to the filing of a new application at any time in the future the Applicant believes it can meet the threshold requirements.

Whereupon the Commission, with one dissent, confirmed its action of dismissal (R. 5008-13). These review proceedings were then instituted in this Court under section 313(b) of the Federal Power Act.

STATUTES, REGULATIONS AND RULES INVOLVED

Among FPC regulations and portions of the Federal Power Act involved which are not included in the brief of petitioner are the following:

FPC Regulations (18 C.F.R. 4.41)

§ 4.41 Required exhibits:

There shall be filed as part of the application for license the following exhibits:

* * *

Exhibit G—Statement showing the financial ability of the applicant to carry out the project applied for, together with a statement or explanation of the proposed method of financing the construction thereof.

Federal Power Act (16 U.S.C. 825g(a))

Sec. 308(a) Hearings under this Act may be held before the Commission, any member or members thereof or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission, in accordance with such rules and regulations as it may

prescribe, may admit as a party any interested State, State commission, municipality, or any representative of interested consumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

SUMMARY OF ARGUMENT

1. The petitioner was repeatedly advised by the Commission, commencing in 1961 when it filed application for a hydroelectric project license, that the application was defective because of lack of material showing a market for the power and ability to finance the project. Despite these admonitions, and despite assurances from petitioner that the requisite showings would be forthcoming, petitioner failed to perform. The resulting dismissal by the Commission was a reasonable act, fully supported by Commission precedents. Since dismissal was without prejudice, the petitioner is free at any time to pursue its ideas, assuming petitioner can show the markets for the power and the financing essential to produce that power. This is an appropriate burden upon any applicant and is properly required by the Commission in carrying out its responsibilities for the proper utilization of public lands, as well as of waterways, for hydroelectric purposes.

2. Petitioner's arguments concerning the presence of Public Service, Humble and the District as intervenors in the proceedings below are not well taken. Section 308(a) of the Federal Power Act permits all three interventions, as do the Commission's rules on this subject. Despite anti-trust allegations, it is nevertheless clear that a competitor may have intervenor status. It was in any event for the Commission to decide whether the presence of the intervenors was in the public interest. Petitioner's objections to the intervention of Humble and the District, not having been raised before the Commission on application for rehearing, cannot now be raised before this Court.

ARGUMENT

- I. The petitioner, having failed to make the required showings on both a market for its power and financing to provide the power generating facilities, despite repeated demands for this information and repeated protestations that it would be forthcoming, was properly dismissed by the Commission.

This case has been pending before the Federal Power Commission since petitioner's filing of an application for a hydroelectric license under the Federal Power Act in January of 1961. The record is abundantly clear that on at least ten occasions in that period there have been formal, written communications from the Commission to the petitioner seeking information on the plans for the marketing of the power and for the financing of project construction (R. 37-38).⁵

It is also clear that petitioner has several times acknowledged that the showings had not been made but claimed that they would be within a definite, specified period and sought time for this purpose. Such extensions of time were sought by telegram of June 20, 1963 (R. 998), which was granted (R. 999), and by letter of August 24, 1963 (R. 1001), which FPC also granted (R. 1006). In response to a Commission request in March of 1964 as to the then status of petitioner's negotiations relating to power marketing (R. 1136), petitioner in October of that year sought a conference with the FPC Staff (R. 1143), which was also granted (R. 1144). Even after this conference, and after the filing of an amended application on which public notice was given, petitioner on June 10, 1965, asked FPC for 9 months within which to furnish contracts for the sale of power and material relating to financing (R. 1614). This too was granted by the Commission's order of August 19,

⁵ In addition to the Commission's order of August 19, 1965 (R. 1775-78), there were Commission letters of February 2, 1961 (R. 171); March 17, 1961 (R. 174); March 30, 1962 (R. 336); May 31, 1962 (R. 342A, 342B); March 20, 1963 (R. 368); July 29, 1963 (R. 1000); March 19, 1964 (R. 1136); June 23, 1964 (R. 1141); and May 11, 1965 (R. 1355).

1965, which set March 1, 1966, for the filing of petitioner's direct case to include evidence on marketing and financing (R. 1775-77).

At the hearing on April 12, 1966 (R. 1-101), the Examiner specifically asked during the course of petitioner's opening statement for some expression on the observation in the Commission's August 19, 1965, order that:

the application is still deficient as to information regarding the financing of the project and as to information on availability of markets for electric power, and the Applicant has been asked to remedy these deficiencies. (R. 1776.)

In response petitioner conceded that "... we do not at this moment have a complete presentation ..." on financing (R. 18); that "... the feasibility of the project does depend upon a responsible purchaser for the power ..." not yet under contract (R. 18); that if possible "... [the contract] will be in the record ... by the time the hearings are conducted in May." (R. 19.) Petitioner's counsel further stated:

I must equally frankly say to you that I don't think anyone, or certainly we cannot say how this project would be financed until we have consummated a contract with a responsible power user. (R. 29.)

There was accordingly no doubt that the application was properly subject to a motion to dismiss under the terms of the Commission's August 19, 1965 order (R. 1775-77). The parties immediately made it clear that dismissal would be sought (R. 29, 31, 38-39). At that, the motions to dismiss on which the Commission ultimately acted did not come until after the petitioner's resubmission of May 23, 1966, which was still defective; this gave petitioner even more time. Indeed, in view of the latitude which had been enjoyed by the petitioner in this case, he would probably have been permitted to make the requisite showing

right up until the Commission's order on rehearing of May 15, 1967 (R. 5008). This was almost six and one-half years after petitioner's initial filing, yet in that period he had not come up with any evidence that he could finance the project or market any portion of its output.

Despite the clearly reasonable treatment by the Commission of this matter, petitioner states:

... Respondent should be ordered and directed to reinstate petitioner's application and not to dismiss the same until there has been submitted to Respondent sufficient evidence that no market can be found by Applicant for this power.

This should be done, petitioner says, because dismissal:

... even though without prejudice is grossly unreasonable, contrary to the public interest, preemptory and precipitous and in direct violation of the duties and responsibilities of the Commission (Brief, p. 19.)

Petitioner thus not only seeks to reverse the burden of proof, but almost by incantation seeks to convert its failure to show a market and financing into a Commission responsibility.

First, on burden of proof, as the proponent seeking an order issuing a license petitioner clearly had the burden under section 7(c) of the Administrative Procedure Act (5 U.S.C. § 556(c)) to make the requisite showings. The Commission's procedural regulations on this score are certainly well within that agency's discretion.⁶

In connection with markets, § 4.40 of the Commission's regulations requires an applicant for license to give appropriate detail on "the proposed use or market for the power to be developed." Where there is no positive assurance of a market:

... a full and complete statement and explanation shall be made of the applicant's expectations in this regard and of the basis therefor.

⁶ Cf. *Sunray Mid-Continent Oil Co. v. FPC*, 364 U.S. 137, 157 (1960).

When such statements were not offered in the 1961-1963 period, petitioner assured the Commission that the omission would be covered by actual contracts for the power (R. 1001-02, 1614-15). As the Commission observed in dismissing the case these were never forthcoming (R. 4890).

On financing, the requirement of the regulations is unmistakable:

§ 4.41 *Required exhibits.* There shall be filed as part of the application for license. . . .

* * *

Exhibit G. Statement showing the financial ability of the applicant to carry out the project applied for, together with a statement or explanation of the proposed method of financing the construction thereof.

Applicant simply could not demonstrate financial ability in applying for a license in 1961. The more grandiose the application became the more remote became the possibility of making this demonstration. The Commission can hardly be held to blame for this.

But the petitioner would make this the Commission's responsibility under the principles of *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (2d Cir. 1965), *cert. denied* 384 U.S. 941 (1966), and of *Udall v. FPC*, 387 U.S. 428, 18 L. Ed. 2d 869 (1967). Neither case supports such a proposition. The former was especially concerned that the Commission's record show an examination of sources of power alternative to hydroelectric facilities so that in balancing competing uses of water the record would be clear that issuing a license would constitute "comprehensive development" of the water resources under section 10(a) of the Federal Power Act considering "... other beneficial public uses, including recreational purposes..." 16 U.S.C. § 803(a). Similarly, in *Udall* the Court

⁷ A companion case, *Washington Public Power Supply System v. FPC*, was decided in the same opinion. Both cases were on certiorari to this Court, *sub nom.* *Washington Public Power Supply System v. FPC*, 123 App. D. C. 209, 358 F. 2d 840 (1966).

was concerned with assuring that values arising out of water resources other than their hydroelectric potential would be protected. The Court noted:

... We cannot assume that the [Federal Power] Act commands the immediate construction of as many projects as possible. . . . (18 L.Ed 2d at 882.)

These cases clearly give no comfort to petitioner who would require the Commission apparently to divine "... sufficient evidence that no market can be found by Applicant for this power" (Pet. Br. 19). The Commission did not have to use a crystal ball to find (R. 4891):

(2) The evidence submitted by applicant in support of the availability of a market for the power proposed to be produced by Project No. 2289, and the evidence of ability to finance the project, is inadequate to support the application.

The petitioner nowhere argues that this finding, which was peculiarly within the competence of the Commission to make, was incorrect. It is precisely matters of economic detail of this sort which the Commission exists to determine, and within the limited scope of review available to the courts it cannot be said, particularly in the face of the history on this matter since 1961, that the Commission's finding was not warranted.⁸

The responsibilities of the Commission which underlie the finding above quoted are unmistakably clear. The Commission's over-all responsibility, under section 10(a) of the Federal Power Act (41 Stat. 1068; 16 U.S.C. § 803(a)), is to find that the project for which a license is sought, is the project which in its judgment is best adapted to a comprehensive plan for improving or developing a waterway for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power

⁸ United States ex rel. Chapman v. FPC, 345 U.S. 153, 171 (1945). See also, Namekagon Hydro Co. v. FPC, 216 F. 2d 509, 512 (7th Cir. 1954).

development, and for other beneficial uses. To enable the Commission to make such a finding, the Act empowers it to seek such information as it shall require (16 U.S.C. § 802). Toward this end, §§ 4.40 and 4.41 of the Commission's Regulations require a showing by the applicant on markets and financing so as to demonstrate the economic and financial feasibility of the proposal.

This case does not represent the first or only time the Commission has rejected an application where the applicant was unable to make an adequate showing of economic and financial feasibility. As early as 1936 the Commission denied the application of Hugh L. Cooper to construct a project on Clark Fork of the Columbia River (Project No. 44—Washington) after finding that the applicant had failed to show his ability to finance the project, and could not demonstrate a market for the power to be developed.⁹ In Cooper's case, as in petitioner's, the application was denied without prejudice to the applicant's right to renew at such time as satisfactory showings with respect to the deficient matters could be made.

Subsequent decisions of the Commission have similarly concluded that the Commission will not issue a hydroelectric license to an applicant unable to demonstrate economic and financial feasibility: *Gasconde River Power Company*, 1 F.P.C. 424 (1937); *Pacific Gas & Electric Company*, 2 F.P.C. 300 (1940); *Public Power and Water Corporation*, 12 F.P.C. 197 (1953); *Wilson and National Youth Foundation*, 23 F.P.C. 571 (1962); and *Public Utility District No. 1 of Skamania County*, 32 F.P.C. 444 (1964).

The reasons for the Commission's consistent policy of insisting that license applicants provide a definite showing of market need and financial support are sound and understandable. As the "guardian of the public domain," (*F.P.C. v. Idaho Power Co.*, 344 U.S. 17, 23 (1952)), the

⁹ Extract from the minutes of a meeting of the Federal Power Commission, December 15, 1936.

responsibility rests heavily upon the Commission, when hydroelectric license applications are brought to it, to ascertain that public lands such as involved in this case, and the adjacent water resources are developed in the most comprehensive manner possible for the benefit of the public. There can be no compromise with respect to the qualifications the Commission has set up for all applicants if the purposes of section 10(a) of the Act are to be fulfilled. A determination that an applicant has or has not met these qualifications is within the peculiar competence of the Commission, and can be set aside only upon a showing that the Commission has acted arbitrarily, capriciously, and outside the scope of its statutory authority. No such showing has been made in this case.

II. Petitioner's argument challenging the right of Public Service Company, the Colorado River Water Conservation District, and Humble Oil & Refining Company to intervene is without merit.

Petitioner contends that the Commission wrongfully permitted the District and Humble to intervene in the proceeding below in violation of section 8(b) of the Administrative Procedure Act (5 U.S.C. § 557(c)). The intervenors submit that this contention is plainly erroneous and is unsupported by any judicial decision wherein the Commission's authority to grant limited rights of intervention has been in issue.

Section 308(a) of the Federal Power Act¹⁰ provides:

Hearings under this Act may be held before the Commission, any member or members thereof or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission, in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality, or any representative of interested consumers or security holders, or any com-

¹⁰ 49 Stat. 858; 16 U.S.C. 825 g.

petitor of a party to such proceeding; or any other person whose participation in the proceeding may be the public interest.

To implement the authority conferred upon it by the above quoted section of the Act, the Commission has adopted a regulation pertaining to "intervention" in pertinent part as follows:

Sec. 1.8 Intervention. (a) *Initiation of intervention.* Participation in a proceeding as an intervenor may be initiated as follows:

* * *

... (2) By order of the Commission upon petition to intervene.

(b) *Who may petition.* A petition to intervene may be filed by any person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. Such right or interest may be:

(1) A right conferred by statute of the United States;

(2) A right conferred or an interest which may be directly affected and which is not adequately represented by existing parties and as to which petitioners may be bound by the Commission's action in the proceeding (the following may have such an interest: consumers served by the applicant, defendant or respondent; holders of securities of the applicant, defendant, or respondent; and competitors of the applicant, defendant or respondent).

(3) Any other interest of such nature that petitioner's participation may be in the public interest.

Section 308(a), as implemented by the Regulations adopted by the Commission, constitutes the framework within which interested parties may petition to intervene. All that remains is for the Commission to determine, in its judgment, whether the interests asserted by prospective intervenors fall within the categories specifically set forth in its Regulations.

Quite obviously that determination must be made by the Commission within the framework of the broad scope of the public interest, and the Commission is peculiarly qualified to make such a determination after opportunity is afforded other parties to the proceeding to raise objections to the prospective intervenor's participation.

This Court has considered the procedural question of whether intervention is discretionary with the Commission, and has not questioned the right of the Commission to exercise such discretion. *National Coal Ass'n v. Federal Power Commission*, 89 App. D.C. 135, 191 F. 2d 462 (D.C. Cir. 1951). Judge Bazelon, speaking for the Court said:

It is said that the Commission is authorized to permit or deny intervention at its discretion. . . . This, to us, means that there are some persons who have a right to participate in Commission proceedings and some who do not. We think it clear that any person who would be aggrieved by the Commission's order, such as a competitor, is also a person who has a right to intervene. (p. 467.)¹¹

Although petitioner opposed the intervention of Public Service Company, the District and Humble, they were nevertheless permitted by the Commission to intervene subject to the Commission's usual proviso that: "The participation shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions for leave to intervene. . . ."

¹¹ Petitioner argues that Public Service Company's opposition to its application, and participation as an intervenor, constitutes a violation of the antitrust laws, presumably because petitioner is a potential competitor of Public Service Company. The relevancy of this argument is questionable, and it ignores the fact that petitioner's application was dismissed because of its own deficiencies—entirely unrelated to a competitor's interests. Nevertheless, the proposition that a competitor cannot intervene in an administrative proceeding without subjecting itself to the implications of the antitrust laws is unsound, and was dismissed by the Supreme Court in *Eastern R. R. Conference v. Noerr Motor Freight*, 365 U.S. 127 (1961).

Petitioner's assertion that the Commission must take evidence and hold a hearing on the validity of the interests asserted in petitions to intervene is absurd on its face.

All that is required is that the Commission make a finding that it is in the public interest to permit the prospective intervenors to intervene, subject, of course, to whatever qualifications the Commission may see fit to impose. Such a finding was made by the Commission in each instance involved here, and the petitioner has not demonstrated that its case on the merits was in any way prejudiced by the participation of the intervenors.

Neither case cited by petitioner in its brief (p. 26),¹² in support of its proposition that the Commission must hold hearings and take evidence on petitions to intervene, appears to be in point. In both cases final decisions of administrative agencies were involved, which were dispositive of the proceedings. In *Northern Natural Gas Co. v. Federal Power Commission*, 228 F. 2d 441 (3rd Cir. 1961), a Federal Power Commission order granting a limited right of intervention to certain interests of the coal industry was held not to be a final order of the Commission, and a motion to dismiss a petition for review of the order was granted. In any event, petitioner's failure to object on rehearing to the grant of limited intervention to the District and Humble precludes this Court from now considering any objection thereto. *Utah Power and Light Co. v. FPC*, 339 F. 2d 436, 438 (10th Cir. 1964); cf. *Sunray Mid-Continent Oil Co. v. FPC*, 364, U.S. 137, 157 (1960), construing a provision of the Natural Gas Act (15 U.S.C. 717 r (b)) identical to section 313(b) of the Federal Power Act (16 U.S.C. 825 l).

It should be noted that petitioner apparently does not consider that portion of the Commission's decision permitting the Nebraska Power Review Board to intervene to be tainted with the same error ascribed to its earlier ac-

¹² *Freight Forwarders Institute v. United States*, 263 F. Supp. 460 (1967); *Isbrandtsen Co. v. United States*, 96 F. Supp. 883, 892 (1951).

tions, even though Nebraska's petition was filed out of time and was granted over opposition and without hearing. Petitioner's conception of the Commission's duty with respect to petitions to intervene would appear to vary, depending upon whether the intervenor supports or opposes petitioner's application.

CONCLUSION

The record in this case is clear that there has not been even token compliance with the requirements of the Commission's Regulations governing license applications, which led to the reasonable directive of the Commission that the requirements be fulfilled subject to a motion to dismiss. Petitioner remained in violation of this directive and cannot now complain of the consequences. If the Commission's procedural orders are to have any meaning at all, the Commission should be sustained.

Respectfully submitted,

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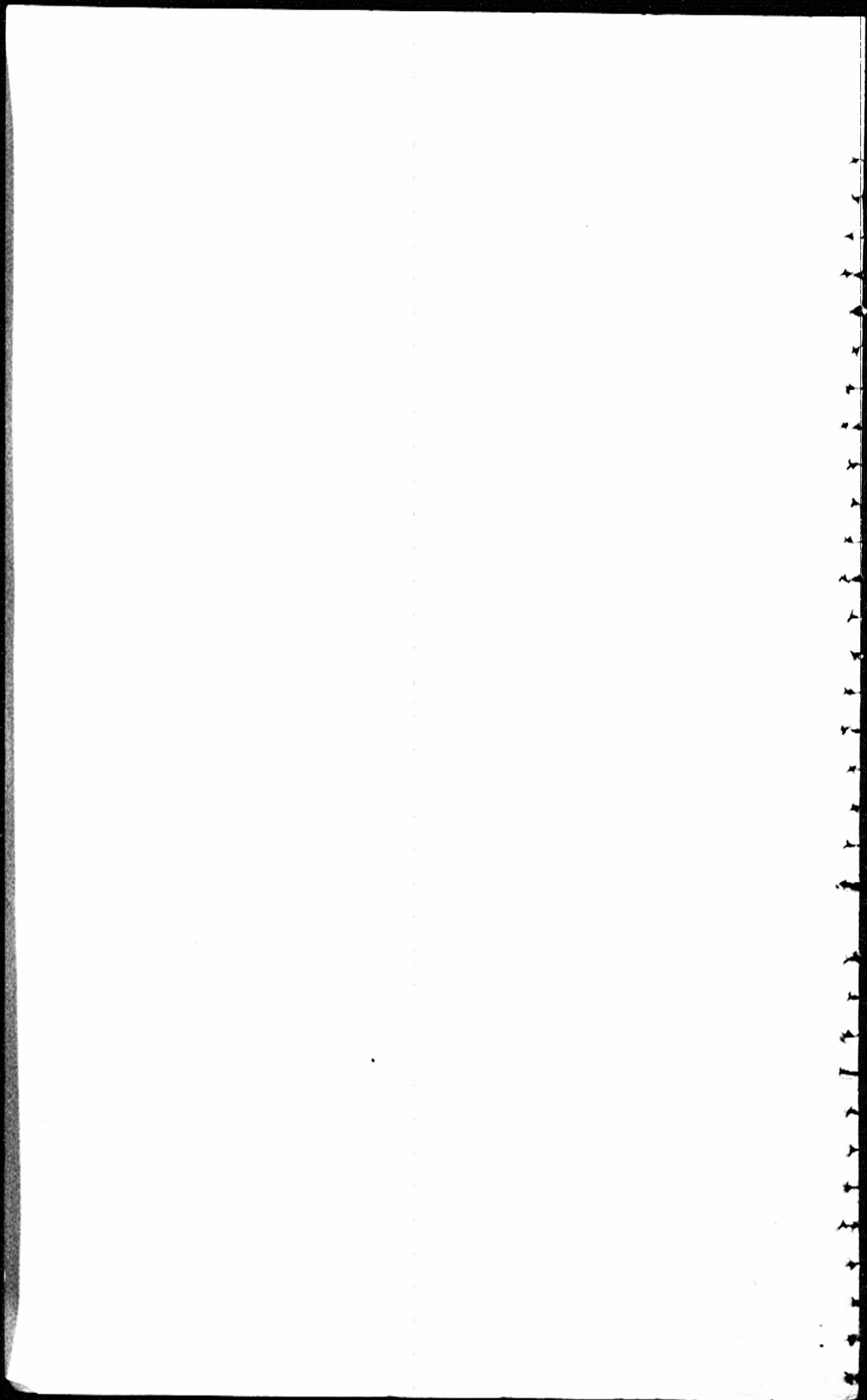
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December 4, 1967



RECEIVED

DEC 4 1967

CLERK OF THE UNITED
STATES COURT OF APPEALS

**BRIEF FOR RESPONDENT
FEDERAL POWER COMMISSION**

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
District of Columbia Circuit

No. 21138

FILED DEC 4 1967

ROCKY MOUNTAIN POWER COMPANY, PETITIONER

v.

CLERK

FEDERAL POWER COMMISSION, RESPONDENT

COLORADO RIVER WATER CONSERVATION DISTRICT; HUMBLE OIL
& REFINING COMPANY; PUBLIC SERVICE COMPANY OF COLO-
RADO; UTAH POWER & LIGHT COMPANY AND THE WESTERN
COLORADO POWER COMPANY, INTERVENORS

ON PETITION TO REVIEW AN ORDER OF THE FEDERAL POWER
COMMISSION

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DECEMBER 4, 1967.

STATEMENT OF QUESTION PRESENTED

Whether the Federal Power Commission reasonably dismissed petitioner's application for a hydroelectric license which had been pending for more than six years where petitioner, after repeated requests from the Commission for further information, had been unable to make a showing that it had a market for its proposed project or an ability to finance construction of the project.

(1)

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IN THE
United States Court of Appeals
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No. 21138

ROCKY MOUNTAIN POWER COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT

COLORADO RIVER WATER CONSERVATION DISTRICT; HUMBLE OIL
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RADO; ~~UTAH POWER & LIGHT COMPANY AND THE WESTERN~~
~~COLORADO POWER COMPANY~~, INTERVENORS

ON PETITION TO REVIEW AN ORDER OF THE FEDERAL POWER
COMMISSION

BRIEF FOR THE FEDERAL POWER COMMISSION

COUNTERSTATEMENT OF THE CASE

Introductory statement

On January 5, 1961, the Rocky Mountain Power Company, the applicant and petitioner, which owns no facilities for the generation or transmission of electric energy, filed an application with the Federal Power Commission for a license to authorize the construction, operation and maintenance of a hydroelectric project on tributaries of the White and Colorado Rivers in the northwestern part of the State of Colorado for the generation and sale for resale of electric energy (R. 108, *et seq.*). The plan proposed was, as we show, *infra*, thereafter subjected to successive modifications of the scope and physical char-

acteristics of the facilities to be constructed for both generation and transmission and as to the markets to be served.

From the time petitioner filed its application until the case was set for hearing in August, 1965, the Commission repeatedly notified applicant that it had not made sufficient showing of a market for the power to be produced or of its ability to finance the project (R. 4895). After the applicant formally submitted its direct case,¹ motions to dismiss the application were filed by the staff of the Commission and the Public Service Company of Colorado on the ground that there was insufficient evidence of a market for the power or of an ability to finance the proposed project. These motions were certified by the hearing examiner to the Commission (R. 4732), which granted them in Opinion No. 514, 37 FPC 329, issued on February 16, 1967 (R. 4883-4892).² That decision was confirmed upon reconsideration by the Commission's order issued on May 15, 1967 (R. 5008-5010). This proceeding seeks review of those orders.

History and shifting scope of applicant's proposals

The applicant's proposals contemplate the development of power and water resources in the Flat Tops Wilderness Area of the Rocky Mountain's White River Plateau that covers an area of about 1,000 square miles (R. 431). By its original application (R. 110-111), the applicant proposed the construction of three principal facilities: a storage reservoir ("Meadows") and two hydroelectric power plants ("Sweetwater" and "Dotsero") about eight and eighteen miles east of the reservoir, respectively. The plants were to be connected by a 230 kv transmission line. The plan for the reservoir, which was to be located on the South Fork of White River about sixty miles west of the continental divide, called for construction of a dam 260 feet high to store waters to be collected by diversion

¹ The prepared testimony of its witnesses (R. 1827-2056), an amendment to its application (R. 2057-2209), and exhibits (R. 2210-3340), were submitted by applicant on March 1, 1966, pursuant to the Commission's order of August 19, 1965, which scheduled a hearing on the application for May 23, 1966. The prepared testimony and exhibits were re-submitted as revised on May 23, 1966, pursuant to the Commission's order of April 29, 1966, requiring the elimination of narrative material (R. 3474-3475, 3479-4656).

² One Commissioner dissented (R. 4893-4897, 5011-5013).

from various tributaries of the Colorado and White Rivers, thence to flow to a collection facility ("forebay") above the Sweetwater power plant. After passing through the generators into Sweetwater Lake, which would provide afterbay pondage for the discharged waters, the water would be conveyed through conduit and tunnel to the Dotsero plant and upon its discharge therefrom to an afterbay and then to the Colorado River nearby. The two generating plants would on completion have had four generating units with a total installed capacity of 150,000 kilowatts ("kw"). Construction was planned to be commenced in the Spring of 1961 and completed three years later (R. 170).

On May 4, 1962, the application was amended by a filing that proposed a substantially different project, substituting a pump-storage project for the conventional generating facility at Sweetwater. This plan called for the pumping back to the forebay during periods of off-peak demand water which had been discharged through the Sweetwater generators during periods of heavy demand (R. 339, *et seq.*). This alternate scheme involved the relocation of the forebay dam at Sweetwater and the elimination of some, and the addition of other, related facilities (R. 414). Waters from Meadows were to flow by tunnel direct to the Sweetwater forebay which would also hold the recirculated water (R. 417). Waters from Sweetwater Lake would be conveyed by an aqueduct system to the regulating forebay at Dotsero, which would remain a conventional hydroelectric generating station (R. 379). Under this second plan, construction would have been completed in three stages to provide a total of 705,000 kw installed generating capacity (495,000 kw at Sweetwater and 210,000 kw at Dotsero), each of the first and second stages to provide 165,000 kw of installed capacity at Sweetwater (R. 380). The Meadows Reservoir would not have been brought into operation until the second or third stage of completion (R. 381). It was proposed to commence construction in the Spring of 1963 and to complete the project in three years (R. 408). A further filing on December 23, 1963, submitted additional data, including estimated costs, revenues and expenses (R. 1011, *et. seq.*).

A third plan, evidenced by a further amendment which was filed in two parts (November 30 and December 31, 1964), al-

tered the proposed project by substituting a pump-storage hydroelectric power plant for the Dotsero facility. This new plant was to be on the South Fork of White River (about seven miles west of Meadows), with a forebay ("Lost Solar") and an afterbay ("South Fork") reservoir to serve it. The proposal for Sweetwater was not changed. The hydroelectric facilities were estimated to cost \$128,000,000. This amendment disclosed, in addition, enlargement of the proposed plan to include (1) a 1,500,000 kw, \$188,000,000 thermal (coal-powered) plant to be owned by a separate entity, Oak Creek Power Company ("Oak Creek"), to provide firm power for sale as well as for off-peak pumping purposes (R. 1617, 2520), and (2) an interconnecting transmission system, East-West Intertie, Inc. ("Intertie"), also a separate entity, to carry generated power eastward to Nebraska, and north and west to Hayden, Colorado and Wyoming at a cost of \$201,000,000 (R. 2530).

Under the third proposal the installed capacity of four planned generating units at the Lost Solar facility would have been 330,000 kw, with provision to increase the output to 495,000 kw (R. 1283). The applicant estimated that the Sweetwater and Lost Solar plants would initially provide a peaking capability of 7½ million KWH per day which would be augmented later by the additional flow from Meadows reservoir to 10 million KWH per day (R. 1314-1315). The hydroelectric facilities were to be built in three stages, the first two of 165,000 kw capacity to be built at Sweetwater, construction to begin in the Spring of 1965 and to be completed by the Fall of 1968 (R. 1248) or by 1970 (R. 1341). The rest of the project (Stage III) was to be scheduled for completion by 1977 (R. 1341). The installed capacity of the system on completion was to total 2,400,000 kw.

Proposals for distribution and sale of generated power

In its original application in 1961, the applicant represented that it was negotiating with Public Service Company of Colorado ("Public Service"), an investor-owned utility, for the purchase of the power it planned to produce (R. 113, 135). By the time of its second proposal in 1962, the applicant was planning to distribute the energy produced through a

regional pool to governmental, REA and investor-owned systems in Wyoming, Utah, Colorado, Arizona and New Mexico by interconnection with a federally-created integrated power pool (the Colorado River Storage Project) (R. 370, 374). Among its projected customers, to be reached through federally financed transmission lines,³ were from time to time the Salt River Project (Salt River Agricultural Improvement and Power District), a municipally-owned system in Arizona; Colorado-Ute Electric Association, Inc. ("Colorado-Ute")⁴ and Great Plains Generation Transmission Cooperative, Inc., of New Mexico, REA-financed cooperatives, and privately owned systems (R. 370, 374, 376, 998, 1001).

Initially, the petitioner anticipated that delivery facilities for the generated power would be provided by its purchasers (R. 113). However, its third proposal contemplated the construction of an extensive transmission system by its separate entity, Intertie, which was organized for that purpose in August, 1964 (R. 1176, 4310), although it appears to have depended on Interior's lines for wheeling power to be generated in Stages I and II of the project (R. 1179). The system, upon completion, would convey the power generated by high voltage transmission lines northwestward 30 miles to Colorado-Ute's steam plant at Hayden, Colorado, northeasterly and easterly 159 miles to the Bureau of Reclamation substation near Archer, Wyoming, and from there easterly to North Platte and Columbus, Nebraska (R. 1176, 1285).

While the project, in its planning stages, underwent vast expansion and major engineering changes from the time the original application was filed, the record is completely devoid of any showing of commitments for the sale of power or for

³ Applicant's claim that the Department of Interior had agreed to wheel its power to the extent permitted by its spare capacity (R. 1019) is without support.

⁴ Colorado-Ute completed construction in 1965 of a 150,000 kw steam-powered generating plant at Hayden, Colorado, which the Colorado Supreme Court held not to have been shown necessary to supply consumer demand. *Western Colorado Power Co. v. Public Utilities Commission*, 411 P. 2d 785, certiorari denied *sub nom. Colorado-Ute Electric Association v. Western Colorado Power Co.*, 385 U.S. 22 (1966). Issues tangentially relating thereto are now pending in this Court in *Salt River Agricultural Improvement and Power District v. F.P.C.*, No. 20960.

its transmission to firm purchasers. As noted above, the applicant initially hoped to distribute its generated power through Public Service (R. 113). It then evinced its desire to sell power through the transmission system of the Colorado River Storage Project to municipal, REA-financed and investor-owned systems by interconnecting to systems in the western and southwestern part of the United States. At the time of its last amendment, the applicant was directing its efforts toward the sale of the bulk of its power to municipal and REA-financed systems in Nebraska (R. 1001, 1139-1140, 1179, 2245).⁵ None of the discussion advanced beyond the point of negotiation.

Commission requests to correct application deficiencies

Upon initial review of the applicant's first filing, the company was informed (by letter dated February 2, 1961), that among other deficiencies, there was an inadequate showing of its ability to finance the project and of the market to be served by the projected output (R. 171). It was first anticipated by the Commission that the financial feasibility of the project would follow upon execution of a long-term contract or lease with Public Service for the purchase of power to be generated (letter dated March 17, 1961, R. 174-175), but when evidence of the latter was not submitted for a year, the Commission, by letter dated March 30, 1962 (R. 336), requested the deficiencies in its application be corrected within 60 days. Alternatively, it suggested that the application be withdrawn to clear its docket of inactive proposals, or else the application would be subject to dismissal. The applicant's response on May 4, 1962, was that agreement with prospective purchasers for a sale of the power was "imminent" (R. 338).

When a further request for the information (by letter dated May 31, 1962, R. 342A, 342B) was not answered after a lapse of nearly ten months, the Commission by letter dated March 20, 1963 (R. 368) again requested the data within 90 days. This

⁵ In support of its application for reconsideration the applicant submitted a report of an exploratory meeting on March 2, 1967, with Consumers Public Power District, Tri-State G. & T., Nebraska G. & T., Central Kansas Electric Co-op, Sunflower Electric Coop and Wheatland Electric Coop which contemplated delivery of the power through Intertie (R. 4969-4987).

request was met by applications for extensions of time, first for 60 days and then for 90 days.⁶ Both of these were granted (R. 999, 1006). The first extension request was followed by a letter from the Commission dated July 29, 1963, advising that the application as revised, amended and supplemented on March 22, 1963, was not acceptable and again requested compliance (R. 1000). Inquiry as to the status of negotiations made on March 19, 1964 and June 23, 1964, following the applicant's inaction, brought a response on November 15, 1964, that there can be no question but that a market for the power exists (R. 1136, 1141, 1145).

On May 11, 1965, the applicant was again advised that failure to supply the requested information within 30 days would constitute grounds for rejection of the application (R. 1355). In its response, dated June 10, 1965, the applicant asked for an additional nine-months' period to consummate its negotiations with Colorado-Ute, Salt River, the Nebraska Power Review Board and "major public power districts", stating that its negotiations with the Nebraska agencies had reached the point where final decision was awaiting the adoption of facilitating state legislation⁷ (R. 1614-1615).

By formal order issued on August 19, 1965, the applicant received the extension it sought. However, the order, reciting the history of the application and its continued deficiencies regarding market and financing feasibility of the project despite extensive amendments and the requests made to remedy them, found it appropriate and in the public interest to hold a public hearing, which it scheduled for May 23, 1966, but subject to a definitely prescribed procedure which included a direction to the applicant to submit its direct testimony and exhibits. In addition, it provided (R. 1776):

⁶ The first request made by telegram dated June 20, 1963, stated that a new financing program was to be considered by Central Investment Company of Denver and that discussions were underway for the sale of power with the Bureau of Reclamation of the Department of Interior and the REA (R. 998); the second, by letter dated August 24, 1963, stated that negotiations with REA had resulted in its expressed intention to approve a long term purchase of applicant's total output of 330,000 kw by Great Plains and Colorado-Ute generation and transmission cooperatives (R. 1001).

⁷ The legislation was not enacted.

The Applicant's filing shall include a full and complete statement of a definite plan for the financing of the project, and a full and complete statement of definite plans for the marketing of the electric power to be produced by the project. Failure to comply with this directive will constitute a basis for a motion to dismiss the application for a license for lack of completeness.

At the prehearing conference held on April 12, 1966, Mr. Charles F. Brannan, speaking as the applicant's president, admitted that he could not say how the project would be financed prior to consummation of a contract with a responsible power user (R. 20).⁸ For its showing of marketability, Mr. Brannan referred to a "letter of intent" from the Consumers Public Power District of the State of Nebraska ("Power District") to negotiate preliminarily for 100,000 kw of power which was subject, *inter alia*, to the applicant's obtaining rights to wheel the power to the purchaser, as well as to a final determination of the exact rates to be paid (R. 17, 2245-2251). Mr. Brannan initially stated that the applicant sought a license to construct, operate and maintain only Stages I and II of the project, *i.e.*, the pump-storage facility at Sweetwater to produce 330,000 kilowatts of power,⁹ but he also indicated that a more comprehensive scheme should be considered (R. 81).

⁸ A "letter of interest" from Kuhn, Loeb & Co., dated February 28, 1966, constituting the applicant's only evidence of feasibility to finance the project, contained numerous preliminary conditions to be met prior to the negotiation of a financing plan (including the existence of contracts with qualified purchasers to take power for a period covering the term of the bonds to be issued and at rates sufficient to meet expenses of operation, renewals, replacements, taxes, amortization and interest). It clearly stated that it was "not possible to state at this time the basis upon which this project would be financable" (R. 2269). The underwriting firm by letter dated May 18, 1966, referred to a likelihood that the financing will be through the issuance of securities of a non-profit corporation, but the applicant does not explain the background of this statement (R. 4837).

⁹ The absence of firm plans upon which feasibility of the project depends may be inferred from the statements of Mr. Brannan at the pre-hearing conference. He disclosed the need for a transmission system unless a purchaser for the Sweetwater peaking capacity was found nearby and of the thermal plant for a baseload if the purchaser also required firm power (Tr. 11). No steps had been taken to secure REA financing for a transmission system, although the petitioner's estimates of cost are based on REA financing (R. 1140, 2888).

Intervenors in the Commission proceeding

The filing of the application and the amendments resulted in the submission of several hundred protests, principally from individuals and organizations concerned with preserving the natural condition of the wilderness area (R. 1362, *et seq.*). For this purpose, the Colorado Wildlife Federation, Inc. ("Federation") and the State of Colorado Game, Fish and Parks Commission ("Park Commission"), petitioned and were allowed to intervene (R. 1797, 1824, 3352, 3367). In addition, the Public Utility Commission of the State of Colorado ("Utility Commission") noticed its intervention and the Commission granted intervention petitions of the Colorado River Water Conservation District ("Conservation District"), Utah Power and Light Company ("Utah"), Western Colorado Power Company ("Western Colorado"), Humble Oil Company ("Humble"), and the Nebraska Power Review Board ("Review Board").¹⁰

Disposition of the application

Public Service's motion to dismiss the application was filed, May 23, 1966, after applicant's resubmission¹¹ of its direct testimony and exhibits. Mr. Brannan's resubmitted testimony states that the principal market for the power will be Nebraska and its neighboring States; that the power is also being offered to users in Kansas and South Dakota and that it may be made available east of the Missouri River. He referred also to pending negotiations with a public body and a REA-cooperative. For financing arrangements, Mr. Brannan referred to Kuhn, Loeb & Co.'s letter of January 27, 1966, and a supplement discussing the feasibility of financing the project as a non-profit enterprise by issuing tax-exempt bonds (R. 4315-4317, 2267-2269, 3607).

The motion was based in part, on the applicants' failure to comply with the Commission's directive for adequate information as to the project's financibility and the marketability of its power (R. 3410, 4657). The staff of the Commission, Utah,

¹⁰ The notice of and petitions for intervention and relevant orders appear in the record at pp. 1365, 1540, 1546, 1553, 1652, 1774, 1797, 1800, 1824, 4869, 4900.

¹¹ Pursuant to an order of the Commission dated April 29, 1966, requiring the elimination of narrative material (R. 3474-3475).

Western Colorado, Humble,¹² the Conservation District, the Park Commission and the Utility Commission moved separately or joined in the motion to dismiss (R. 3401, 3411, 3419, 3435, 3438, 4658, 4670, 4674, 4683, 4690, 4694). The Commission, by a four to one vote, dismissed the application since it found that the evidence submitted failed to demonstrate a market for the power proposed to be produced or an ability to finance the project (Opinion No. 514, issued February 16, 1967, 37 FPC 329 (to be published soon), R. 4883-4897).

The applicant's evidence of the marketing of the power proposed to be made available by its last proposal centered, as we have seen, upon prospective users in Nebraska.¹³ The Commission recognized a general need for power in Nebraska (R. 4887), but found that the probability that other power supplies would be relied upon to satisfy the projected demands of the Power District in 1970 because of the time involved in completing financing arrangements prior to the commencement of construction and in the actual construction of the project.¹⁴ This view was independent of possible further delays in remedying deficiencies in the application for license which had remained throughout its pendency (R. 4887). While noting that a firm commitment to purchase power was not necessarily a prerequisite for obtaining a hydroelectric license, the Commission found that here the only suggested financing plan relied upon was by the sale of securities which the proposed underwriter would not undertake except upon the existence of firm contracts for the sale of the power to be generated (R. 4889-4890).

Although holding that there was no basis for going forward with a formal hearing since the applicant had failed to make

¹² Humble's motion was directed solely to Stage III of the application (R. 3418).

¹³ The Commission noted that negotiations for sale of power in Colorado had been fruitless (R. 4887).

¹⁴ The Commission mentioned several plans under consideration for expected increased power demands in Nebraska. They included a proposal pending before the Nebraska Power Review Board for the construction by 1970 of a 200 megawatt coal-fired steam-electric generation station at Grand Island and plans of Consumers Public Power District and Iowa Power and Light Company and of the Omaha Public Power District for nuclear-powered plants to be located respectively on the Missouri River and near Ft. Calhoun. In addition, it referred to proposals to construct high voltage transmission lines from Grand Island to Omaha, from Sioux City to Kansas City through Omaha, and from Stegall to North Platte (R. 4888-4889, footnote 1).

even a threshold showing that the project would be in the public interest, this dismissal was without prejudice to any later application which was supported by a sufficient showing of financial feasibility and a market for the power (R. 4891). The Commission, upon reconsideration of its order of dismissal, made upon applications of the applicant and motion of the Review Board, found (one Commissioner dissenting) that no facts or legal principles had been submitted warranting any change in or modification in the order of dismissal (R. 5008-5013).

STATUTES, REGULATIONS, AND RULES INVOLVED

The relevant parts of the statutes and regulations involved are printed in the appendix, *infra*, pp. 27-33. They are Sections 4, 5, 7, 9, 10, 24, 308 and 313 of the Federal Power Act, 16 U.S.C. 797, 798, 800, 802, 803, 818, 825g and 825l; Sections 4.31, 4.40 and 4.41 of the Commission's Regulations under the Federal Power Act, 18 C.F.R. 431, 440 and 441; and Sections 1.8 and 1.14 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 1.8 and 1.14.

SUMMARY OF ARGUMENT

The only relevant issue raised by petitioner is the reasonableness of the Commission's action in dismissing its application for a license for a hydroelectric project. The Commission took this action because petitioner had failed to show that it could market the power it proposed to produce or that it could finance construction of the facilities. The dismissal of the application came only after the petitioner's showing in these respects had remained deficient for more than six years despite numerous requests from the Commission for such a showing. The crux of petitioner's position is that the Commission was bound to keep the application pending as long as the petitioner proposed to undertake to remedy the deficiencies, even though the dismissal was without prejudice to a new filing of even the identical proposal if the requisite market and financing were shown.

The frequent and substantial changes made in applicant's proposals since 1961 highlight the evolution of a plan for a power project from one to provide 150,000 kw hydroelectric

peaking capacity to a system of coal-powered and pump-storage generation totalling 2,490,000 kw to be delivered by its own high voltage transmission wires, in an ineffectual search for purchasers of the electric energy to whom the petitioner hoped eventually to sell, first within the State of Colorado, then in the States to the north, west and southwest and finally in those to the east. As characterized by its president, the application sought "some kind of opportunity for a new entity of this type to enter the field [of hydroelectric-thermal generation and power transmission]" (R. 20).

The Commission properly saw no purpose in considering the merits of the application's sufficiency in other respects, since the applicant was unable to satisfy the Commission's threshold requirements of a showing of a market or of a plan to finance the proposed project. The only financing suggested by applicant was completely dependent on firm contracts for the sale of project power, contracts which were admittedly non-existent. Indeed, petitioner does not allege error in the Commission's failure to proceed to a hearing on the merits, urging instead only that its application should have been kept open indefinitely. No basis for so holding the application in limbo has been shown.

While we need not reach the questions raised by the petitioner as to the alleged duty of the Commission to inquire into the utilization of the resources of the area sought to be developed, the asserted impropriety of granting limited intervention to certain intervenors, and a claimed anti-trust violation by participation of the intervenor Public Service Company of Colorado, we show there is no substance to these contentions.

ARGUMENT

I. The Commission acted reasonably in dismissing the application after petitioner's repeated failures to supply required information

Dismissal of the petitioner's application for a license authorizing it to construct, operate and maintain a hydroelectric

project in the Flat Tops Wilderness Area was reasonably ordered after the petitioner, despite repeated warnings to it made over a span of more than six years, failed to make a better showing of a market and an ability to finance the proposed project. We note at the outset that the dismissal is without prejudice to the refile of the application if these deficiencies can be overcome, so that the harm, if any, to applicant from the present dismissal appears to be purely conjectural.

Between February 21, 1961 and August 19, 1965, the applicant was advised (no less than nine times by letter from the Commission's Secretary and finally by order of the Commission which formally scheduled a hearing on the application)¹⁵ of the necessity of making a full and complete statement¹⁶ by March 1, 1966 of a definite plan for financing the project and of definite plans for the marketing of the electric power to be produced by the project. These letters and the Commission's order of August 19, 1965, plainly informed the applicant that its application was vulnerable to dismissal if an adequate showing in these respects was not made.¹⁷ As we have recited, petitioner has been unable to find purchasers willing to commit themselves to a long-term contract. Moreover, petitioner is not only admittedly dependent upon outside financing for all stages of its proposal, but the sole financing plan proposed by it depends upon the existence of firm contracts of sale. In addition, the past changes in the design and scope of the project and especially of the proposed facilities for delivery of its power indicate that the plans for the proposed project, including the facilities to be used to deliver the power, would not reach definitive form until the market area to be served by petitioner

¹⁵ (R. 171, 174-175, 342A-342B, 368, 1000, 1136, 1141, 1355, 1775).

¹⁶ Sections 4.40 and 4.41 of the Commission's Regulations which set forth the data to be included in an application for license require the submission of information of the use or market of the power to be developed and a showing of financial ability to carry out the project applied for. The provisions in pertinent part are incorporated in the appendix annexed to this brief, *infra*, 31-32.

¹⁷ Under Section 1.14 of the Commission's Rules of Procedure, App., *infra*, pp. 32-33, incomplete filings may be rejected, unless waived pursuant to application.

and extent of its expected demands became certain.¹⁸ In view of the financing plan proposed, the specific market proposal becomes particularly important.

Petitioner sought to overcome the deficiencies of its market and financing showing by pointing to anticipated needs for power in the surrounding States and to its studies showing the benefits its project would bring by interconnection with other baseload producers and distributors (Br. pp. 5-6, 17-18). But, as the Commission found, there is no showing that future regional demands would not be satisfied from other power sources, especially in view of the contingent nature of Rocky Mountain's project due to its lack of financing (R. 4888).

Petitioner misreads the purport of the Commission's Regulations by implying that a showing of the proposed use or market for the power to be developed, as called for by Section 4.40(i), can be satisfied by evidence of a potential demand for power generally and not for the power to be developed from the project. At the time the motion to dismiss was considered, the possibility of inducing utility systems in Colorado, Utah, Wyoming, Arizona and New Mexico to purchase petitioner's power had become extremely remote and its efforts to secure a market were being concentrated in negotiations for sales in Nebraska. But a demand in Nebraska cannot be satisfied by power generated in Colorado without facilities to deliver it. Petitioner's proposal for a license to cover Stages I and II does not contemplate the construction of the means to deliver the power to be developed¹⁹ and legislation proposed in the Nebraska legislature for the mandatory wheeling of power for municipal utilities (Legislative Bills 319 and 620, 77th Sess.) was, as the Commission observed in its order of May 15, 1967, confirming the dismissal of petitioner's application, not enacted during that Ses-

¹⁸ Indicative of a further change in planning is the suggestion that Stages I and II of the hydroelectric project, the Oak Creek plant and the transmission system, be financed by a nonprofit corporation qualified to issue tax exempt revenue bonds to be organized by the petitioner and representatives of the proposed users of the power in Nebraska (R. 3607). The record does not contain evidence of any steps being taken to carry out this proposal.

¹⁹ However, the negotiations which have been had with possible Nebraska power users were predicated on delivery of the power by the petitioner.

sion (R. 5009, footnote 1).²⁰ In these circumstances, the Commission's insistence upon a showing of the existence of a market for the power proposed to be generated rather than a need generally in States contiguous to the project and its action in not permitting the proceeding to remain open indefinitely was plainly fair and reasonable.

An equally persuasive ground for the dismissal was the petitioner's total inability to evidence any concrete plan for financing the project. While the record is replete with technical data and references to petitioner's efforts to find purchasers of its projected output, it is almost barren of indications of financing plans. Indeed, it was powerless to pursue negotiations with an underwriter who had no expressed interest in the project until binding and adequate commitments for the sale of the power to a responsible purchaser or purchasers were obtained. Petitioner's efforts might have been applied diligently since 1961 to induce various prospective purchasers to enter into contracts but none has advanced beyond the negotiation stage. The suggestion (Br. p. 5) of the imminency of firm contract commitment is thus not well founded; indeed, the same claim of imminency has been made ever since 1961. Petitioner relies on a January 27, 1966 memorandum of intention from the Consumers Public Power District to contract for the sale and delivery of power, as a basis for the relief it seeks, but the Power District informed the Commission as recently as March 7, 1967, that (R. 4898):

* * * negotiations are still in progress between [it and petitioner] *for the possible purchase of some power from this project*. Final results will be delayed until we have completed several studies which are now under way. [Emphasis supplied.]

And, the amount of power involved was only part of the market needed. Thus, it was clear to the Commission, when it was reconsidering its dismissal order, that a commitment that would satisfy even part of the market requirements upon which a financing plan might be predicated was not likely to

²⁰ The argument, moreover, is not supported by any evidence or allegation of the amount, if any, or unused capacity of transmission lines which might otherwise be available to deliver the power.

be made by the applicant's currently most favorable prospect and that no reasonable grounds for holding the application open indefinitely had been shown.

The Commission, in repeatedly requesting the submission of information necessary to enable it to consider whether the project was in the public interest, provided the petitioner with ample opportunity to comply. Its power to demand such data is not questioned. The United States Supreme Court stated in *First Iowa Hydro-Electric Cooperative v. F.P.C.*, 328 U.S. 152 (1946), at 168-169, that

* * * what evidence an applicant for a federal license should submit to the Federal Power Commission, appears in § 9 of its Act. It contains not only subsection (b) but also subsections (a) and (c). Section 9(c) permits the Commission to secure from the applicant "Such additional information as the commission may require." [Footnotes omitted.]

The Court went on to say that subsection (c) enabled the Commission to secure information *in so far as it deems it material* for consideration of the application. Compare the correlative power of the Commission to ascertain information relevant to subsection (b) in connection with its exercise of discretion in granting, denying or conditioning licenses in *Oregon v. F.P.C.*, 211 F. 2d 347, 351 (CA9, 1954), reversed on other grounds, 349 U.S. 435 (1955).

In a similar case, *Robert P. Wilson*, 28 FPC 571 (1962), where the applicant introduced no evidence of economic or financial feasibility for proposed projects in spite of repeated requests for it, the Commission refused to permit the applicant to withdraw his applications because it would have sanctioned further delay. The Commission, citing its decision in *Public Power and Water Corp.*, 12 FPC 197, 199-200 (1953), stated it did not customarily issue hydroelectric licenses to an applicant who has not presented evidence of financial ability to carry out the project, and who does not show that the project is economically feasible. The Commission has frequently held that an applicant has the burden of presenting evidence to support its application. *E.g.*, *Amerada Petroleum Corp.*, 29 FPC 171

(1963); *Union Texas Petroleum Co.*, 29 FPC 273 (1963); *H. L. Hunt*, 28 FPC 897 (1962), reversed on other grounds *sub nom. Hill v. F.P.C.*, 335 F. 2d 355 (CA5, 1964).

We submit that the Commission acted most reasonably in attempting, over so long a period, to elicit the information it deemed necessary for a consideration of the application on its merits, granting every extension of time requested by petitioner prior to the filing of the motions to dismiss that were granted. In these circumstances, the Commission's action invoking its regulations regarding incomplete applications without prejudice to a further filing cannot fairly be characterized as petitioner does (Br. p. 19) as "grossly unreasonable, contrary to the public interest, preemptory and precipitous * * *".

II. The orders under review have not affected petitioner's substantive rights

The Commission is authorized by statute to adopt rules of practice and procedure to govern its proceedings. Section 308 of the Act, 16 U.S.C. 825g. The validity of the procedural rules which it has adopted for the summary disposition of incomplete applications has not been challenged and their application in a manner which did not deny petitioner any substantive right should not be disturbed. *Cf. Pan American Petroleum Corp. v. F.P.C.*, 352 F. 2d 241 (CA10, 1965). Moreover, the Commission's opinion expressly left open to the petitioner an opportunity to file "any later application which may be made supported by a sufficient showing of financial feasibility and a market for the power" (R. 4891). Since the pendency of an application for license confers no preference upon the applicant,²¹ a refiling of the identical application could be made at any time without leave of the Commission and such action will place the application in substantially the same posture it previously had.

²¹ In contrast, see Sections 5 and 7 of the Act, 16 U.S.C. 798, 800, regarding the preferences conferred by the issuance of preliminary permits. See, *Washington Public Power Supply System v. F.P.C.*, 123 App. D.C. 209, 358 F. 2d 840 (1966), reversed *sub nom. Udall v. F.P.C.*, 387 U.S. 428 (1967).

The contention that the dismissal has foreclosed the continuance of negotiations for the sale of power (Br. p. 15) is supported by neither fact nor reason, but seems to be based on a mistaken assumption that vested rights or rights of priority become appurtenant to an application for license upon filing and remain attached during its pendency. The statute creates no right of priority for a license application where, as here, they were not preceded by preliminary permit. Sections 5 and 10(a). 16 U.S.C. 798, 803(a). The prayer of the petition for review for reinstatement of the application without loss of priority discloses petitioner's erroneous understanding of the operation of the Act. If several proposals are made the project which is, in the judgment of the Commission, best adapted to a comprehensive plan for development of the resources shall be adopted if a license is issued. See Section 10(a).²²

Moreover, where rights of priority are created under the statute, upon the issuance of a preliminary permit pursuant to Section 5, they are of limitable duration, *i.e.*, for such period or periods not exceeding a total of three years, as the Commission in its discretion fixes for planning and technical preparations (for making examinations, surveys, maps, plans, specifications and estimates) as well as for "making financial arrangements". Since the statute strictly limits the priorities which may be conferred by the Commission for preliminary planning, it seems evident that indefinite delay in the processing of an application (for which no statutory priority is given) was not intended to be allowed.²³ Furthermore, the reservation

²² A more candid objection to the dismissal as having psychological effect, *i.e.*, one creating a "negative atmosphere" for the conduct of further negotiations with prospective purchasers of power, asserted by intervenor Review Board in its motion for reconsideration (R. 4901), is unsupported and wholly conjectural. If such were the only injury alleged to flow from the orders under review, it is doubtful whether it would constitute grievance within the meaning of Section 313(b) of the Act, 16 U.S.C. 825l(b), sufficient to warrant review on the present state of the record in this case. Proof of facts indicative of injury could have been, but was not, offered by motion for leave to adduce additional evidence under Section 313(b) of the Act.

²³ There is also a practical inhibition to other persons considering development of an area while an application is pending because of a reluctance to incur the planning expenditures involved when a completed plan is before the Commission for consideration. In this connection it should be noted that

from other disposition or use of lands of the United States which automatically results under Section 24 of the Act upon the filing of an application should not in fairness to others be indefinitely prolonged.

The implication that petitioner's extensive efforts and the talents of leading engineers in the United States and England which have contributed to the development of its proposed project have been rendered worthless or its affirmative contention that the petitioner will be precluded from obtaining an evaluation of its project on the merits (Br. pp. 17, 20), would have substance only if the petitioner does not or is unable to renew its proposals by an application that contains the information required for its proper consideration. As the Commission reasonably found, no purpose would be served in going forward with a hearing (which would obviously be complex, contested and strenuously litigated) when the application did not attain the threshold stage of showing the project's financial and economic feasibility (R. 4891).

The petitioner never challenged the relevance of the data the Commission deemed essential for passing upon the merits of the application, nor objected to the order scheduling the hearing. It did not seek a postponement until after its direct case had been submitted. When motions to dismiss were filed, it sought to forestall action on them by a request for indefinitely more time for the stated purpose of presenting the evidence which had been requested since 1961: proof of contract commitments sufficient to establish economic feasibility and evidence that it has secured the financing necessary for construction of its proposed facilities (R. 4929).

While petitioner urges that the Commission erred in not holding the proceeding in abeyance,²⁴ it inconsistently suggests that the Commission should have given full consideration to the merits of the project (Br. p. 15). Its argument that the

Conservation District filed an application for a preliminary permit for development of a part of the area covered by petitioner's application on May 29, 1967, after the Commission's order confirming dismissal was issued. The petitioner has not requested permission to intervene in that proceeding.

²⁴ Petitioner seeks to place a novel burden on the Commission in proposing that the application remain pending until proof is submitted that no market can be found by the applicant (Br. p. 19).

Commission was under a statutory duty to ascertain whether the proposed project will operate economically as a power project and to develop the facts as to the cost of alternative sources of power (Br. pp. 20-21), is based upon an erroneous application of views stated in *Scenic Hudson Preservation Conference v. F.P.C.*, 354 F. 2d 608 (CA2, 1965), certiorari denied *sub nom. Consolidated Edison Co. of New York v. Scenic Hudson Preservation Conference*, 384 U.S. 941 (1966). The issue in that case was whether a license could be issued without considering proposed alternatives pertaining to the public interest made by the "third party" in that proceeding which opposed the issuance of a license to the applicant. This case has not procedurally reached the merits where public interest issues should properly be considered.

The Act does not impose a duty upon the Commission to consider alternatives for the development of natural water resources whenever an application is filed. As the Mr. Justice Douglas stated in *Udall v. F.P.C.*, 387 U.S. 428 (1967), in construing the obligations imposed by Sections 4(e) and 10(a) of the Act, at p. 449: ²⁵

The issues of whether deferral of construction would be more in the public interest than immediate construction and whether preservation of the reaches of the river affected would be more desirable and in the public interest than the proposed development are largely unexplored in this record. *We cannot assume that the Act commands the immediate construction of as many projects as possible.* * * * [Emphasis added.]

²⁵ * * * Section 4(e) of the Act, the section authorizing the Commission to grant licenses, provides in part: "Whenever the contemplated improvement is, in the judgment of the Commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the commission and shall become part of the records of the commission." And § 10(a) of the Act provides that: "the project adopted * * * shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes * * *"

Accordingly, the generalization in *Scenic Hudson* of the "sweeping authority" given by Congress to the Commission and its stated duty to see that the "record on which it bases its determination must be complete" must be read in the light of the fact that the issues related to a determination on the merits.²⁶ The Commission, in determining the inapplicability of *Scenic Hudson*, stated (R. 4890):

* * * Although nothing was added to this Commission's authority or responsibility by *Scenic Hudson*, its role as guardian of the public domain was highlighted. See *First Iowa Coop. v. F.P.C.*, 328 U.S. 152; and *F.P.C. v. Idaho Power Co.*, 344 U.S. 17. Where the applicant has shown that its proposed project can and will operate economically as a power project, the Commission nevertheless has the affirmative duty to act only if the record is adequate to make a reasoned decision on whether the proposed project is or can be conditioned to be one which will be "best adapted to a comprehensive plan" for developing the waterway involved not only for power purposes but also for other public purposes, such as navigation, flood control, irrigation, wildlife, conservation and recreation, as required by Section 10(a) of the Act. But until the applicant has made a reasonable showing that it could accomplish its power objectives, it seems useless to proceed.

In this context it would be unreasonable, in light of the posture in which this application was, further to burden federal and state agencies and the private organizations which had intervened by requiring them to incur additional expenses and to devote further efforts in up-dating their studies and in preparing witnesses for a hearing on the project's impact on the area's forest, fish and wildlife resources, and factors involving drainage, pollution, erosion and other elements comprising the public interest.

* It should be noted that the opinion of the dissenting Commissioner upon which the petitioner relies preceded the Supreme Court's decision in the *Udall* case.

III. The Commission properly exercised its discretion in permitting intervention

A. Petitioner's contentions that the Commission erred in granting Conservation District and Humble limited rights of intervention (Br. pp. 25-27) plainly do not bear upon the central issue involved, *i.e.*, whether the Commission should have dismissed petitioner's application for a license. Not only was the dismissal requested by other parties, including the Commission's staff, but the Commission could, in any event, have dismissed the application *sua sponte*. Thus, the contention that the Commission wrongfully entertained and granted the Conservation District's "jointure" in the motion to dismiss the application (Br. p. 25) is without substance as well as being factually incorrect. The determination of the sufficiency of the application for a license did not depend on the standing of any movant as a party to the proceeding, since the Commission had the power to give effect to its own regulations and orders, and mere acknowledgment that certain parties had joined in the motion to dismiss (R. 4886) was without legal consequence.

But even then, consideration of the petitioner's objection to the grant of limited intervention²⁷ appears to be premature. *Northern Natural Gas Co. v. F.P.C.*, 288 F. 2d 441 (CA3, 1961). Petitioner, being a party to the proceeding, can complain of any interlocutory action or order of the Commission upon review of the final order adjudicating the merits of the proceeding. Objection to a grant of intervention must depend on what transpires during the course of proceedings that would have impact on the Commission's final decision. The reason for this seems obvious. The propriety of intervention cannot ordinarily be decided prior to hearing of the merits of the application. Upon hearing, the Commission can properly consider whether the evidence proffered would have a bearing upon the public interest.

Here, Humble alleged that the grant of the application could conflict with plans for the development of its oil shale deposit

²⁷ The orders granting intervention conditioned intervenors' participation to be "limited to matters affecting certain rights and interests specifically set forth in their petitions for leave to intervene" (R. 1774, 1824).

(R. 1654-1656) and Conservation District raised question as to the project's possible interference with its duties in developing of the area's water resources imposed under a State statute regarding the conservation, use and development of the Colorado River and its principal tributaries (R. 1800-1803, 1815). The suggestions in both petitions for intervention furnished reasonable grounds for believing that these intervenors might contribute toward a more complete record of the public interest factors to be considered in passing upon the proposed plan of development. The purpose in allowing parties other than an applicant to participate in a proceeding is to permit the submission of information detrimental to as well as in support of a proposed plan of development. The applicant can hardly be expected to supply facts which are not favorable to it bearing on public interest questions.

Aside from petitioner's failure to object to the grant of limited intervention to these parties in its application for rehearing,²⁸ it wrongly assumes that intervention may be granted only as of right and pursuant to a hearing in which that right is established. Nothing in the Act requires an agency hearing on a petition to intervene.²⁹ The statute delegates to the Commission the power to admit as a party to a proceeding, in accordance with such rules and regulations as it may prescribe, any person whose participation in the proceeding may be in the public interest. Section 308, 18 U.S.C. 825g. Under Section 1.8(b) of the Commission's Rules of Practice and Procedure, a petition to intervene may be filed by any person claiming "an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the pro-

²⁸ Section 313(b) of the Act deprives the Court of Appeals of the power to consider any objection which has not been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. *Utah Power and Light Co. v. F.P.C.*, 339 F. 2d 436, 438 (CA10, 1964); cf., *F.P.C. v. Colorado Interstate Gas Co.*, 348 U.S. 492, 498-499 (1955), construing an identical provision of the Natural Gas Act, 15 U.S.C. 717r(b).

²⁹ Contrary to the contention of the petitioner (Br. p. 25), Section 8 of the Administrative Procedure Act, 5 U.S.C. 557 does not require all Commission decisions, procedural as well as substantive, to be bottomed upon a hearing. The Section is by its terms applicable only to "cases in which a hearing is required to be conducted."

ceeding is brought." The interest may be of "such nature that petitioner's participation may be in the public interest." The threshold determination whether intervention should be granted is thus solely dependent on whether the participation of a person requesting it may bear upon the public interest factors involved. Based on the allegations made in the petitions seeking leave to intervene, the Commission's grant of limited intervention was not improper.³⁰

While the petitioner does not argue that the grant of intervention to Public Service was improper, it finds fault with its participation on the theory that its opposition to the proposed project, evidenced in part by its motion to dismiss the application, constituted, in some vague manner, a violation of anti-trust laws (Br. pp. 23-24). The contention, though a novel one, is not consistent with the scheme of the Federal Power Act which specifically recognizes as appropriate for participation in a case a person such as Public Service, who is a competitor of a party to a proceeding. Section 308(b).³¹ The policy of the statute is in accord with the concept that administrative regulation of an industry does not disqualify a person from taking a public position on matters in which he is financially interested.

Apart from the fact that it was unnecessary for the Commission to rely on the motion made by Public Service to dismiss the application, it is clear that competitors who have a right to intervene in administrative proceedings would also have the right to participate in them to the extent of moving for their dismissal. Compare *F.C.C. v. Sanders Brother Radio*

³⁰ While the merits of the intervenors' applications are not properly in issue, it should be noted that they contain allegations of possible economic injury from the proposed project. This circumstance alone might have required the grant of intervention under the above-cited provisions of the Act and Rules of Procedure. *E.g.*, *National Coal Association v. F.P.C.*, 89 App. D.C. 135, 191 F. 2d 462, 464 (1951); *Virginia Petroleum Jobbers Association v. F.P.C.*, 105 App. D.C. 172, 265 F. 2d 364 (1959); *Juarez Gas Company, S.A. v. F.P.C.*, — App. D.C. —, 375 F. 2d 595 (1967).

³¹ Public Service contends that due to the vagueness of petitioner's application its "traditional market for its power present and planned may be jeopardized," and applicant's proposed project may "result in an unnecessary duplication of generating and transmission facilities in the historical Colorado market area served and to be served by [Public Service]" (R. 1542-1543).

Station, 309 U.S. 470 (1941), where the economic interest of an existing radio station, though not a matter which must be considered by an administrative agency in granting a license to a new station, was sufficient to enable Sanders to obtain a judicial review of the impact on the public of competitive factors. Inhibitions against participation by competitors in matters affecting the public interest were put to rest in *Eastern Conference of Railroads v. Noerr Motors, Inc.*, 365 U.S. 121 (1961), where the Supreme Court stated, at page 139, that a "construction of the Sherman Act that would disqualify people from taking a public position on matters in which they are financially interested would thus deprive the government of a valuable source of information."³² Without participation by competitors in a proceeding, the Commission might be deprived of the information needed to implement Section 10(h) of the Act, which provides for the incorporation in its licenses, of prohibitions against illegally restrictive practices involving combinations, agreements, arrangements or understandings, express or implied, to limit the output of electric energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service.

As we have noted, this Court has held that competitors of an applicant have a right to intervene in agency proceedings to oppose competition within their market areas.³³ Accordingly, we see no basis for the contention of petitioner that the suggestion of mere opposition to the issuance of a license con-

³² *Noerr* involved an alleged Section 2 violation of the Sherman Act by the association which lobbied in the Pennsylvania legislature for the passage of a bill which would have had anti-competitive effects. The Supreme Court rejected the contention that the antitrust laws had been violated. Subsequently in *United Mine Workers v. Pennington*, 381 U.S. 657 (1965), the Court held that the union and several large coal companies did not violate the Sherman Act by approaching the Secretary of Labor to obtain establishment under the Walsh-Healy Act of a minimum wage for employees of contractors selling coal to the Tennessee Valley Authority. The Court stated that the Sherman Act was not intended to bar concerted action of this kind even though the resulting official action damaged competitors at whom the campaign was aimed. The legality of the conduct was not at all affected by any anti-competitive purpose it may have had. "*Noerr* shields from the Sherman Act a concerted effort to influence public officials regardless of intent or purpose." *Id.* at 670.

³³ See footnote 30, p. 24, *supra*.

stituted an illegal practice. This ~~argu~~ argument like the others is, in any event, premature, since the grounds of Public Service's opposition would not become ripe for consideration until the merits of the application are reached.

CONCLUSION

For these reasons, the orders of the Commission should be affirmed.

Respectfully submitted,

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DECEMBER 4, 1967.

APPENDIX

The Federal Power Act, August 26, 1935, c. 687, 49 Stat. 838, 16 U.S.C. 791, *et seq.*, provides in pertinent part as follows:

SEC. 4. The Commission is hereby authorized and empowered—

(e) To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam * * *.

(f) To issue preliminary permits for the purpose of enabling applicants for a license hereunder to secure the data and to perform the acts required by section 9 hereof * * *.

* * * * *

SEC. 5. Each preliminary permit issued under this Part shall be for the sole purpose of maintaining priority of application for a license under the terms of this Act for such period or periods, not exceeding a total of three years, as in the discretion of the Commission may be necessary for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements. * * *

* * * * *

SEC. 7. (a) In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time ^{to} be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.

* * * * *

SEC. 9. That each applicant for a license hereunder shall submit to the commission—

(a) Such maps, plans, specifications, and estimates of cost as may be required for a full understanding of the proposed project. Such maps, plans, specifications when approved by the commission shall be made a part of the license; and thereafter no change shall be made in said maps, plans, or specifications until such changes shall have been approved and made a part of such license by the commission.

(b) Satisfactory evidence that the applicant has complied with the requirements of the laws of the State or States within which the proposed project is to be located with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting, and distributing power, and in any other business necessary to effect the purposes of a license under this Act.

(c) Such additional information as the commission may require.

SEC. 10. All licenses issued under this Part shall be on the following conditions:

(a) That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes; and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

* * * * *

(h) That combinations, agreements, arrangements, or understandings, express or implied, to limit the output of electrical energy, to restrain trade, or to fix, maintain, or increase prices for electrical energy or service are hereby prohibited.

* * * * *

SEC. 24. Any lands of the United States included in any proposed project under the provisions of this Part shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress. * * *

* * * * *

SEC. 308. (a) Hearings under this Act may be held before the Commission, any member or members thereof or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission, in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality, or any representative of interested con-

sumers or security holders, or any competitor of a party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

* * * * *

SEC. 313. (b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia * * * Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. * * *

Regulations under the Federal Power Act provide in pertinent part as follows:

SEC. 4.31 * * *

An application may be acceptable for filing for processing prior to final Commission action thereon, provided it contains the information required under § 4.40 (a), (b), (c), (d), (e), (f), and (h), together with Exhibits A, B, E, G, J, K, L, M, and O, required under § 4.41. * * * An application which fails to meet these requirements will be rejected by the Secretary as provided by § 1.14 of this chapter. However, the applicant may be required to furnish the balance of the information required under §§ 4.40 and 4.41 at such time as the Secretary directs and failure to furnish same will constitute grounds for rejection of the application by the Secretary as provided by § 1.14 of this chapter. * * *

SEC. 4.40 * * *

Each application for license for a complete project of more than 2,000 horsepower installed capacity, to be constructed, or for a minor part of such project shall be verified, shall conform to § 131.2 of this chapter, and shall set forth in appropriate detail the following information in the order indicated. * * *

(i) The proposed use or market for the power to be developed, indicating whether applicant is a public utility or will become a public utility, and if so whether it is or will be subject to regulation by any State agency. In case the applicant can give no positive assurance that there is or will be a demand for the power upon completion of construction of the project, and that it will be used or distributed by the applicant or sold to others for use or distribution, a full and complete statement and explanation shall be made of the applicant's expectations in this regard and of the basis therefor.

SEC. 4.41 * * *

There shall be filed as part of the application for license the following exhibits * * *

Exhibits G. Statement showing the financial ability of the applicant to carry out the project applied for, to-

gether with a statement or explanation of the proposed method of financing the construction thereof.

Federal Power Commission Rules of Practice and Procedure provide in pertinent part:

SEC. 1.8 * * *

(a) *Initiation of intervention.* Participation in a proceeding as an intervener may be initiated as follows: * * *

(2) By order of the Commission upon petition to intervene.

(b) *Who may petition.* A petition to intervene may be filed by any person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. Such right or interest may be:

(1) A right conferred by statute of the United States;

(2) An interest which may be directly affected and which is not adequately represented by existing parties and as to which petitioners may be bound by the Commission's action in the proceeding (the following may have such an interest: consumers served by the applicant, defendant, or respondent; holders of securities of the applicant, defendant, or respondent; and competitors of the applicant, defendant, or respondent).

(3) Any other interest of such nature that petitioner's participation may be in the public interest. * * *

(f) *Notice and action on petitions*— * * *

(2) *Action on petitions.* As soon as practicable after the expiration of the time for filing answers to such petitions or default thereof, as provided in paragraph (e) of this section, the Commission will grant or deny such petition in whole or in part or may, if found to be appropriate, authorize limited participation. * * *

SEC. 1.14(a) * * *

(2) *Acceptance for filing.* There will be accepted for filing only such applications, pleadings, and other papers as conform to the requirements of this part, and any

other applicable rule, regulation, or order of the Commission or applicable statute; applications, pleadings or other papers tendered for filing which, because of the particular rule, regulation, or requirement involved, patently fail so to conform will be considered defective and will be rejected unless accompanied by a request pursuant to §1.7(b), for waiver of, or exception to, any rule, regulation, or requirement with which the document tendered is in conflict or does not conform. Such request shall show the nature of the waiver or exception desired and set forth the reasons in support thereof. Unacceptable filings may be returned by the Secretary with an indication of the deficiencies thereof and the reasons for nonacceptance and return. Acceptance for filing shall not waive any failure to comply with the rules and such failure may be cause for striking all or any part of such filings.

REPLY BRIEF OF PETITIONER

In the
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 21,138

ROCKY MOUNTAIN POWER COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

*PETITION FOR REVIEW OF AN ORDER
OF THE FEDERAL POWER COMMISSION*

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 28 1967

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REPLY BRIEF OF PETITIONER

STATEMENT

The issues presented for review are clearly stated in Petitioner's original brief. The following matters in Respondent's and Intervenor's briefs require correction and clarification.

Comments with Respect to Counterstatements of the Case.

The opening sentence of the Federal Power Commission's counterstatement asserts that the Petitioner "owns no facilities for the generation * * * of electric energy". This is incorrect. The application for Project No. 2289 on file with Respondent and the record before this Court clearly shows that the Petitioner now owns very valuable water rights on Sweetwater Creek, a tributary of the Colorado River in Western Colorado, specifically adjudicated by law as the first and prior right to the use of these waters for the production of electric energy. The ownership of these rights has been affirmed by the Supreme Court of the State of Colorado. The Petitioner also owns adjudicated water rights for the production of power, other industrial uses, domestic and municipal consumption and irrigation on the South Fork of the White River, also a tributary of the White River located in Western Colorado. The award of the Lower Court to applicant is under review by the Supreme Court of the State of Colorado on petition of the Colorado River Water Conservation District for and on behalf of itself and the Humble Oil and Refining Company to which said District was optioned the White River water rights should it succeed in reversing the trial Court. These water rights are highly valuable resources and the essential facilities for the generation of electric energy and were acquired only after extended and costly litigation instigated and maintained by the Intervenor in this proceeding. It is to defeat the Petitioner's right and opportunity to apply their resources to beneficial use within a reasonable period under the appropriation doctrine and laws of the State of Colorado that is the sole reason and explanation for the interventions before the Federal Power Commission and in this proceeding. These Intervenor would be the direct and immediate and private beneficiaries of the failure of Applicant to utilize within the lawful limitations the rights awarded to it by the Colorado Courts.

In their eagerness to emphasize the lapse of time between the filing on January 5, 1961, of the initial application and the date of dismissal of the greatly and beneficially expanded and enlarged amended application on February 16, 1967, the Respondent and Intervenors review and emphasize in their counterstatements the very substantial amount of engineering skills, effort and money which has been invested in the enlargement, enhancement and development of Project No. 2289 for public benefit.

The counterstatements detail with much more elaboration than has Petitioner, the vast amount of effort and money expended by the Applicant during this period of time. It is also clear from these statements that each and every order directed by the Respondent to Petitioner was performed by Petitioner on time and that, at the present moment, the Application for Project No. 2289 is complete in all respects except for a showing that a contract for the sale of the power to a responsible user has been consummated. It is obvious to all concerned, as stated in the two letters from Kuhn, Loeb & Company that financing of the project is conditioned only upon the concluding of a satisfactory power sales contract and that a plan of financing can only follow a power sales contract.

Issues of Public Interest

Respondent and Intervenors seek to limit review to consideration of the reasonableness of Respondent's actions under the dictated time schedule and take the position that, "This case has not procedurally reached the merits where public interest issues should properly be considered" (Res. Brief, p. 20, 1.12). They would deny any consideration of the statutory duties to represent the public imposed by the Federal Power Act and other laws cited by Petitioner.

The sweeping denial by Respondent, echoed by Intervenors, would eliminate any consideration of the public interest in:

(a) the request of the State of Nebraska Power Review Board to keep the proceedings open for submission of further market evidence;

(b) the duty of the Respondent to consider proper utilization and conservation of the power resources required to assure an abundant supply of energy in the area;

(c) the legality of granting intervention to Public Service Company of Colorado, which company was first named by agreement in Petitioner's original application as the market outlet for power to be produced by the project, but finally appeared as the opponent making the motion to dismiss the application, which was joined in by Staff of Respondent, and is seeking to prevent the development of power sources in Colorado by Applicant and to restrain the sale of power by Applicant in interstate commerce.

(d) the merits of the position of the Intervenor Colorado River Water Conservation District and Humble Oil and Refining Company and the basis for their opposition to the project.

Erroneous Assumption of Facts and Conclusions by Respondent

Petitioner pointed out at page 15 of its original brief that Respondent indulged in erroneous assumptions of fact in concluding that the future load demands for Nebraska were being adequately and actively provided for. In the Respondents brief, page 10, this erroneous conclusion and assumption, which was stated at page 4 and in Footnote 1 thereto extending onto page 5 of the Commission's opinion of February 16, 1967, is elevated to a "finding" by asserting that the Commission "* * * found that the probability that other power supplies would be relied upon to satisfy the projected demands of the power district in 1970 because of the time involved in completely financing arrangements prior to the commencement of construction and the actual construction of the project", thereby compounding the error.

Applicability of Anti-Trust Laws

Respondent treats the charge of violation of the anti-trust laws as being present only "in some vague manner" (Res. Brief, p. 24), while Intervenor dismiss the issue in a footnote (Int. Brief, p. 22) as being of questionable relevancy. Both point to the opinion in *Eastern Conference of Railroads v. Noerr Motors, Inc.*, 365 U.S. 121 (1961), for convenience referred to herein as Noerr, and Respondent adds the case of *United Mine Workers v. Pennington*, 381 U.S. 657 (1965) as providing a blanket rule of immunity from the anti-trust laws for the actions of Public Service Company by which it attempts to limit the output of electric energy and restrain its flow in interstate commerce.

Significantly, neither Respondent nor Intervenor deny the restrictive nature of Public Service Company's actions. Instead of assuming its responsibility to the public to order enforcement of the law prohibiting illegal restraints of trade, Respondent urges that it might be deprived of information needed to implement Section 10(h) of the Act without participation by competitors in the proceeding but declined to consider further the effect of its actions.

The *Noerr* case involved claim and counterclaim by railroads and truckers using a similar technique to influence legislation and law enforcement practices. The court's opinion in the case properly protects the constitutional right of persons to take a public position on matters in which they are financially interested. It was held that no violation of the Sherman Act can be made out where a restraint upon trade or monopolization is the result of valid governmental action. Here the question is whether the Respondent's actions and omissions are invalid and thereby open the case to the test of reasonableness, applicable under the Sherman Act to all actions that monopolize or restrain trade. The *United Mine Workers v. Pennington*, *supra*, case harmonized the Sherman Act and the policy of the National Labor Relations Board concerning the activity of labor unions. Neither the *Noerr* or *United Mine Workers v. Pennington* cases dealt with

situations that were subject to an additional statutory prohibition against limiting the output of electrical energy or restraining trade by combinations, agreements, arrangements, or understandings, express or implied. The rule in the *Noerr* case provides no blanket immunity applicable here. Application of the test of the reasonableness to the subject acts of restraint and monopolization under the Sherman Act would not infringe on the constitutionally protected freedoms spoken of in *Noerr*.

ARGUMENT

The argument of the Respondent, Federal Power Commission, and the Intervenor, Public Service Company of Colorado and others, is totally devoid of any discussion of the duty of Respondent to protect the public interest in the efficient development of the public resources decreed to Applicant by the Colorado Courts. Respondent's argument totally ignores the demonstrated and undisputed capabilities of Project No. 2289 to supply a serious power deficiency, clearly identified by Respondent, and the public interest to be served by allowing this application for license to remain pending so long as the Applicant demonstrates due diligence in its effort to conclude a satisfactory purchase and sales arrangement with a responsible user in Nebraska.

Respondent also ignores the formal declaration of interest by a principal distribution agency in Nebraska (R. 4871-74, 4900-03) and of the Nebraska Power Review Board.

Respondent only belabors the lapse of time between January 5, 1961, when the Petitioner initially filed its application for license to produce power by a relatively small conventional hydroelectrical installation on Sweetwater Creek and the date of the order dismissing the application on February 16, 1967. This totally negative argument concerning the lapse of time ignores the proven fact that, during this period, the project was being improved, expanded and enhanced by highly competent, capable, professional electrical engineering at the cost of many hundreds of thousands of

dollars. It ignores the fact that the first several years of this period were consumed in futile negotiations with Intervenor, Public Service Company of Colorado, which was professing interest in the power which could be produced by even the small project. It further ignores the fact that after the Applicant realized that it was being deceived and that the Public Service Company had no genuine interest in the distribution of power which Petitioner was capable of producing; the Petitioner then sought other markets outside of the State of Colorado—markets which the Public Service Company of Colorado declared it had no intention or capacity to serve.

Respondent's arguments do not remotely suggest that the public interest was in anywise benefited by the dismissal of Petitioner's application or that its continued pendency could adversely affect the public interest. Furthermore, Respondent does not assert that the Commission is being burdened or inconvenienced by permitting the application to remain pending and fails to cite any statute, rule of law or regulation of the Commission which requires the dismissal of a pending application even though incomplete as to any requirement so long as the record contains evidence of diligent and bona-fide effort to supply the deficiency coupled with evidence of a reasonable expectation that the deficiency can be supplied and a public benefit may result. On the contrary, every applicable rule of law and regulation of the Commission requires Respondent to base its rulings and actions on the paramount public interest.

The record before Respondent is totally void of evidence or suggestion of an alternate use of power producing purposes or other public use serving the public interest.

The pending application uncontestedly asserts the ownership of highly valuable interests and rights which can competently and efficiently provide electric energy to an area which has recently experienced blackouts, the annual demand of which is increasing at a higher rate than the national average of some 8%, and in which the genuine interest of the

users and public bodies warrants full and complete exploration of the potentialities for service of the resources described in the Petitioner's application.

Respondent and Intervenor further ignore the existence of a direct declaration of interest; first by the Consumers Public Power District, a major wholesale power distributor within the State of Nebraska, and the Nebraska Power Review Board, a quasi-public agency, charged with the responsibility of supplying Nebraska consumers with an adequate supply of power.

In reality, the specific application which was dismissed on February 15, 1967, was the revised and expanded application presented to the Commission on December 31, 1964. The true period of pendency before the Commission of the application for Project No. 2289 is the period between December 31, 1964, and the date of dismissal of Petitioner's application. The application filed December 31, 1964, adopted and applied the new electric generating concept of pumped storage based upon the addition of White River hydroelectric resources integrated with Colorado coal or thermal resources.

The record clearly shows that during the period January 5, 1961, and December 1964 the Applicant had exercised the greatest diligence and expended large sums of money in the furtherance of its plan to make maximum effective use of the water resources to which the Colorado Courts had awarded the Petitioner priority rights under the Colorado doctrine of appropriations. Hence, the true period of pendency of the application before the Respondent Commission is a short period of approximately two years—a relatively short period of pendency in view of the magnitude of the project, the urgency of the need for this power in the Midwest and the diligence of the Applicant. This period is also characterized by the expenditure of substantial time and effort on behalf of the Petitioner in defending itself against against the multiplicity of lawsuits instituted by or on behalf of the several Respondents.

Nowhere in the brief of Respondent, the Federal Power Commission, or of the Intervenor is it asserted that the public interest would be in anywise prejudiced by allowing the Applicant's petition to remain pending. The dismissal of the application saves the Commission no money and causes the Intervenor no inconvenience.

By way of the old common law pleading of confession and avoidance, Respondent stresses that the Order of Dismissal is "without prejudice". These words are of little comfort to any bona-fide applicant at any time. In this case, the Intervenor has contrived to make the words utterly meaningless. For, within five days after the Order of Dismissal by Respondent was entered, the Intervenor Colorado Water Conservation District, signed an application for a "preliminary permit for the development of the South Fork of the White River", which was filed with the Commission May 29, 1967 (Exhibit A hereto—Excerpts from Application filed May 29, 1967. See footnote No. 23, Res. Br., pp. 18-19), representing that it holds an interest in the identical sites described in the Petitioner's application, and asking that it be allowed three years within which to develop a water project, using the same water resources as those to which the lower Court has adjudicated priority of rights to the Applicant. This Intervenor and the Intervenor, Humble Oil and Refining Company, to which the same waters are optioned, and, in particular, the Respondent, know that the power deficiency in Nebraska is immediate and critical and should it appear to the power distributors in Nebraska that the Petitioner could not secure a license to commence the construction of its project because the Respondent had granted the Colorado River Water Conservation District a three-year period to study the White River, the Nebraska user would be forced to seek other sources of power for Nebraska users. The promptness with which this application for a nebulous study was filed by the Colorado River Water Conservation District clearly indicates that it is only one additional step in the grand strategy of the Intervenor to pre-

vent the effective utilization by the Petitioner of the hydro power producing resources and thermal resources of Western Colorado for the fulfillment of an urgent public need.

Whether or not under the statutory authority, under which the Colorado River Water Conservation District has been created, the District may file an application for a power project is highly debatable but this is no concern of the Colorado River Conservation District or other Intervenor, whose only interest is the defeat of the Petitioner's project by delay and dissipation of its financial resources.

In Commissioner Ross's dissent, page 3, he observes that "This Commission as trustees of the public at large is abandoning this licensing proceeding to the possible whims of certain parties." (R. 4895.)

The Public Service Company of Colorado meets none of the standards for an Intervenor. This Intervenor has no right to intervene conferred by statute; represents no consumer interest; is not the holder of securities of the Petitioner or any other defendant or respondent; is not an open claimant of the resources proposed to be used; it is not a competitor of the Applicant for the Nebraska market; makes no representation that it represents a public interest of any nature; and makes no other representation which would bring it within the purview of Section 1.8.

The record discloses that the Colorado River Conservation District represents no public interest with respect to the resources now owned by Petitioner. Whatever interest this Intervenor holds, it has agreed to sell to Humble Oil and Refining Company should it be successful in defeating the claims of the Petitioner.

The Humble Oil and Refining Company, in turn, asserts no public interest but merely indicates that if it acquires the water it would apply some portion thereof to the production of oil from oil shale at some nebulous future date for the private benefit of Humble Oil and Refining Company.

None of these Intervenor's assert that their intervention is in the public interest or that they would utilize the public

resources for any public service or benefit should they succeed to the ownership or control of the adjudicated water rights now held by the Petitioner by delaying and frustrating the Petitioner's effort to apply the waters to a beneficial use within a reasonable time.

Neither the Commission nor any Intervenor challenges the engineering potentials, economic feasibility of the project described in the Petitioner's application as an economic, efficient and substantial source of supply for a nationally recognized and clearly identified area of power deficiency. None of the Intervenor's assert that they would use these resources for the public interest should they have an opportunity.

The Commission does not assert that the dismissal of the application is in the public interest or that to allow the petition to remain pending during the time that the Applicant continues to work out its negotiations for sale of its power to responsible users outside the State of Colorado is in anywise a burden upon the Commission or the members of its staff.

CONCLUSION

For the reasons stated in Petitioner's main brief and in this reply brief, we believe the order dismissing the application for license should be set aside and the case remanded for further proceedings.

Respectfully submitted,

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Dated: December 28, 1967

[Exhibit A to Reply Brief for
Petitioner, cited at page 9]

BEFORE THE
FEDERAL POWER COMMISSION

APPLICATION FOR PRELIMINARY PERMIT
FOR THE DEVELOPMENT OF THE SOUTH
FORK OF WHITE RIVER, COLORADO

1. The Colorado River Water Conservation District, created by the Legislature of the State of Colorado as a public body corporate under the laws of the State, and a municipality under Sec. 3(7) of the Federal Power Act, having its office and principal place of business at Glenwood Springs, Colorado, being desirous of obtaining a license under the Federal Power Act, hereby makes application to the Federal Power Commission for a preliminary permit for 36 months, for the project described herein. This application is made in order that the applicant may secure and maintain priority for a license under the Federal Power Act while procuring data and performing the acts necessary to perfect an application for license.

* * *

(From Page 7 of Application)

IN WITNESS WHEREOF, the Applicant has caused its name to be hereunto signed by A. Allen Brown, its President, Philip R. Smith, its Secretary-Engineer, this 20th day of May, 1967.

/s/ A. Allen Brown
A. Allen Brown, President

/s/ Philip P. Smith
Philip P. Smith, Secretary-
Engineer

